

THE CEMETERY AND FUNERAL BUREAU

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 2002 SUNSET REVIEW REPORT

Four Year Overview of the Board's Regulatory Program, Background Paper for the 2001 Public Hearing, Board's Response to Issues and Recommendations from Previous Sunset Review, and Final Recommendations of the Joint Committee and the Department of Consumer Affairs

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1.

OVERVIEW OF THE CURRENT REGULATORY PROGRAM

BACKGROUND AND DESCRIPTION OF THE BUREAU AND PROFESSION

The approximately 250,000 deaths in California each year represent nearly ten percent of all deaths in the United States. At some point, virtually every one of these deaths are handled by one or more of the licensees of the Department of Consumer Affairs, Cemetery and Funeral Bureau (Bureau).

HISTORY AND FUNCTION OF THE BUREAU

In 1993, the Cemetery Board and the Board of Funeral Directors and Embalmers (collectively “the Boards”) came under close scrutiny from the State Legislature. At that time, these semi-autonomous licensing boards separately regulated California’s cemetery and funeral industries under the general umbrella of the Department of Consumer Affairs (Department). That fall, the Senate Committee on Business and Professions, Subcommittee on Efficiency and Effectiveness in State Boards and Commissions (Subcommittee) convened hearings in which these two separate boards, along with other licensing boards within the Department, were reviewed with a view toward improving the efficiency of regulatory boards, eliminating duplicative or overlapping licensing functions and, if need be, eliminate regulatory agencies which no longer serve the public’s need.

In its review, the Subcommittee received testimony from the industries as well as the Boards who argued that there was a great deal of difference between the cemetery and funeral industries.

The Cemetery Board testified that a cemetery deals with land, mausoleums, columbariums and urn gardens. Families purchase property and expect that property to remain the same from then on; cemeteries deal with endowment care trust funds for the care and maintenance of the cemetery into the future. The Board argued that, in contrast, funeral establishments deal with removal of the body from the place of death, the care and preparation of the body, the filing of paperwork, the funeral service, and delivering the body to the cemetery.

The Cemetery Board further argued that the funeral establishment’s involvement is an average of five days, and then its responsibility stops, while the cemetery receives and interrs the body and maintains the interment site from then on. The Cemetery Board argued that the property of the

funeral establishment can be sold; it can go out of business or can change locations – but a cemetery cannot; it must remain from then on.¹

In contrast, the Subcommittee's background report stated:

In objecting to a merger, the Funeral and Cemetery industries stress their differences. Funeral and embalming services are viewed as "short term" in that they generally provide one time services immediately following death, while cemetery services are viewed as "long term" and ongoing. In addition, the funeral and embalming industry involves the care and preparation of dead bodies, while the cemetery industry involves the disposal of dead bodies and care of memorial sites. Cemeteries also involve large capital investments in real estate which mortuaries do not necessarily require.

However, much of what the cemetery industry provides to the consumer is in reality "short term" service – burial, grave closing, marker placement. In addition, a great number of licensees hold licenses in both industries. Because the close relationship of the industries is more compelling than their differences, a combining of the two boards seems likely to best protect the consumer.²

In its final report, the Subcommittee recommended that licensure for the cemetery and funeral industry be transferred to a Bureau under the director of the Department.

The following year, reform legislation was introduced which proposed to eliminate the two Boards and transfer their functions to a bureau under the direct authority of the Department.³ That bill was lobbied heavily by both industries as well as members of the two Boards, and failed as a result.

In 1995, agreement was reached with industry members on legislation to merge the two Boards into a single Board.⁴ However, that legislation was derailed by the discovery in Southern California of what appeared to be serious crimes committed at various cemeteries under the Cemetery Board's jurisdiction. The alleged crimes, which included fraud, embezzlement of endowment care trust funds, the mishandling of human remains and the recycling of grave sites, brought crisis to the state's cemetery industry and overwhelmed the Board. Urgency legislation transferred the regulatory operations of both Boards to the Department as of January 1, 1996.⁵

¹ California, Senate Business and Professions Committee, Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, *Restructuring Consumer-Related Boards and Bureaus*, 1993, pp. 26-28.

² Ibid., pp. 198-199.

³ SB 2037, McCorquodale, as introduced February 25, 1994.

⁴ AB 597, Speier, as introduced February 17, 1995.

⁵ AB 910, Speier, Chapter 381, Statutes of 1995, urgency effective August 4, 1995.

As a side note, a January 1996 report by the State Auditor found illegal and improper activities by two employees of the former Cemetery Board. The activities cited in the report included the illegal receipt of funds and violations of fiduciary duties.⁶

BUREAU STRUCTURE – SIGNIFICANT LEGISLATIVE AND POLICY CHANGES

Since January 1996, the state's cemetery and funeral industries have been regulated under the direct authority of the Department. During this time, a number of legislative and policy changes have affected the specific structure of how the Department regulates these industries.

- In January 1996 the Department created the Cemetery Program and the Funeral Directors and Embalmers Program (collectively "Programs"). To conduct the operations of the Programs, the Department further created a new policy unit, Policy Chief–Cemetery and Funeral; a new Enforcement Division unit–Cemetery and Funeral Unit; the resources of both Boards were consolidated into these functional units.
- The Department fully integrated the Programs' operations into the Performance Based Budgeting (PBB) pilot project which was begun in 1993 with other Bureaus and Programs under its direct authority. Under PBB, the Department was given the latitude to manage resources based on fluctuating program demands. The Department reorganized and centralized the core business functions previously performed by individual Bureaus into licensing, intake, mediation, and enforcement functions (LIME functions). Under PBB, the Department was given the authority to exceed approved budgeted expenditure authority by up to 15%, under specified circumstances.
- In 1996, the Department, with the Legislature's approval, also created on a two-year basis the Cemetery Task Force within its peace officer division, the Division of Investigation (DOI). To create the Task Force, the Legislature enacted AB 597 (Speier, Chapter 38 Statutes of 1996) to amend the Budget Act of 1995 and provide the necessary funds to the Department through a loan for the 1995/96 Fiscal Year. Spending authority for FY 1996/97 and a second loan were authorized through the 1996 Budget Act (Thompson, SB 1393, Chapter 162, Statutes of 1996). The \$8.50 fee per interment to fund enhanced levels of enforcement and to repay the loans was enacted by AB 2234 (Willard Murray, Chapter 964, Statutes of 1996). A report on the Cemetery Program and Cemetery Task Force operations and spending is included in PART 2 of this Report.
- Under a separate provision of law, the Sunset Review Law, the statutory authority for the two Boards became inoperative July 1, 1997, and was repealed January 1, 1998, under its own terms.⁷

⁶ California, Bureau of State Audits, *The California Cemetery Board: Incompatible Activities and Breaches of Fiduciary Duties Over Cemetery Trust Funds*. January 1996.

⁷ The enactment of SB 2036, McCorquadale, Chapter 908, Statutes of 1994, the "Sunset Review Law" established repeal provisions for the statutory authority for each of the Boards – BPC §§ 7601, 9625.

- A 1997 Budget Change Proposal (BCP) provided funding for FY 1997/98 and FY 1998/99, and 11.5 positions on a two-year, limited-term basis for Cemetery Program operations. The BCP provided a total Cemetery Program appropriation of \$ 981,000 for FY 1997/98. The BCP enabled the Department to utilize funds generated by the increased cremation and interment fee to continue to implement enforcement actions begun when it assumed full responsibility and oversight of the industry.
- In 1998, the Department's Omnibus Bill changed the Boards' names in the Business and Professions Code (BPC) to the Cemetery Program and the Funeral Directors and Embalmers Program.⁸
- In December 1998, due to projections of severe budget shortfalls within the Programs, and the lost flexibility associated with PBB to keep staff in limited-term positions beyond a two-year period, the Department reassigned a number of staff to other functional divisions outside of the Programs. At the same time, the Department transferred the remaining staff to the Programs Chief's office. As a result, the responsibility for all complaint mediation, enforcement, audit and policy operations for both the Cemetery Program and the Funeral Program fell upon six total staff. Licensing and administrative operations remained in the Department's centralized divisions. Due to the severely reduced staffing levels, the Programs prioritized their caseload to focus on only the most critical issues. In April 1999, the Department restored two field positions to the Programs to carry out cemetery field operations.
- A FY 1999/00 BCP provided permanent funding and 10.8 positions for Cemetery Program operations. The BCP authorized an annual spending authority of \$1.3 million for continued licensing, enforcement, complaint mediation, audit and consumer protection activities.
- In 1999, legislation was enacted establishing regulatory programs managed by the Departments as "bureaus."⁹
- The Governor's Budget for FY 2000/01 established the policy of organizing regulatory programs within the Department into traditional Bureaus, stating:

In 1993, the Department of Consumer Affairs was selected to participate in a performance-based budgeting pilot project. Under the pilot, the Department was afforded the flexibility to manage its resources based on fluctuating program demands resulting from social, economic and market conditions. To meet the goals of the pilot project, the Department reorganized and centralized the core business functions previously performed by individual Bureaus. Fiscal year 1998-99 was the last year of the pilot project. Fiscal Year 1999-00 is a transitional year as the Department moves back to a more traditional Bureau

⁸ AB 2802, Assembly Committee on Consumer Protection Governmental Efficiency and Economic Development, Chapter 970, Statutes of 1998.

⁹ SB 1306, Senate Committee on Business and Professions, Chapter 656, Statutes of 1999.

structure where enforcement, which includes mediation, and licensing functions is centralized under a Bureau Chief.

- In January 2000, the licensing operations for both Programs, which had been administered by the Division of Licensing, were transitioned to the Bureau. In assuming these responsibilities, it was necessary for the Bureau to review and restructure many of its regulatory operations, including hiring and training new licensing and enforcement staff, and intensively reviewing its licensing, complaint mediation and enforcement operations.
- In 2000, the Department sponsored legislation that recast the Cemetery Program and Funeral Program into the Cemetery and Funeral Bureau.¹⁰

A SINGLE REGULATORY AGENCY

Although differences may be noted in the funeral, cemetery, and crematory industries, their close relationship is more compelling than their differences. The Bureau believes there are distinct advantages to looking at cemeteries, crematories, funeral establishments and the corresponding individual licensees with the same regulatory eye.

Anecdotally, the Bureau has found that what the consumer (or even Bureau staff) views as a complaint against a funeral establishment, may ultimately result in a cremation or cemetery complaint. Conversely, what might appear to be a cemetery or cremation complaint may also involve a complaint against the funeral establishment or funeral director. In such cases, separate regulatory bodies obscure and frustrate the consumer's access to help. A failure to handle cemetery and funeral matters in tandem could result in costly, duplicative investigations, or worse, a failure to address some cases at all.

A single regulator makes sense in other regulatory activities as well. It is more efficient to have one regulator inspect both a funeral establishment and a crematory when they are at the same location or are operated by the same owner. When a cemetery is inspected, having the ability to also look at the funeral establishment operated by the same owner, which is often on the grounds of the same cemetery, streamlines the process.

Licensees who violate cemetery trust fund laws may also violate funeral preneed laws, and those who violate funeral preneed laws may also violate cemetery trust fund laws. Similarly, trust fund violations can indicate other cemetery or funeral abuses. Violations in handling human remains or interments may also indicate problems with trust funds.

Several of the Bureau's most significant cases in recent years, likely would not, or could not, have been pursued had the industries been separately regulated. Examples:

¹⁰ AB 2888, Assembly Committee on Consumer Protection Governmental Efficiency and Economic Development, Chapter 568, Statutes of 2000.

- The 1998 suspension of a Los Angeles crematory and three funeral establishment cremation services holding more than 40,000 preneed funeral accounts – all under common ownership. The Bureau’s Accusation was eventually settled through a stipulated agreement and the businesses were required to be sold to new owners.
- The 1998 discovery at a cemetery/crematory in Contra Costa County of the owner delivering cremated remains to families, when in fact, the uncremated bodies were still held in refrigeration. The Bureau obtained an Interim Suspension Order (ISO) against five funeral establishments and the cemetery/crematory and revoked the owner’s eight (total) licenses through a stipulated settlement.
- The 2000 Accusation against a San Bruno funeral establishment in which the owner stipulated to license revocation and surrender of his cremated remains disposer registration. The owner also agreed to withdraw additional applications for a crematory license and a funeral establishment license. Had the two industries been separately regulated, the crematory license may have been approved.

Unified regulation appears reasonable from a consumer standpoint as well. Consumers shouldn’t be expected to distinguish between these two professions. When consumers can address questions and complaints and receive information and guidance from a single office, consumer protection is enhanced.

§ Who the Bureau Licenses, Titles, Regulates, etc. (Practice Acts vs. Title Acts)

The Bureau has statutory authority to enforce the licensing and practice acts in the Business and Professions Code (BPC) relating to the funeral, cemetery and crematory industries.¹¹ The Bureau also has jurisdiction over specified sections of the Health and Safety Code (HSC) dealing with human remains, cemetery and cremation provisions.¹²

The Bureau’s licensing acts define and limit the practice of its licensees, and restrict the use of the terms “funeral director,” “undertaker” and “mortician” to licensed funeral directors only.

The Bureau had approximately 9,035 active licensees in FY 2000/01 in nine licensing categories. The Bureau’s licensees include (active and delinquent) approximately:

- Funeral Establishment.....941
- Cemetery – Certificate of Authority (COA)190
- Crematory77
- Funeral Director2,187
- Embalmer2,606

¹¹ Division 3, Chapters 12, (beginning with Section 7600 – the Funeral Directors and Embalmers Act) and 19 (beginning with Section 9600 – the Cemetery Act) of the Business and Professions Code.

¹² Part 1 (commencing with Section 8100), Part 3 (commencing with Section 8250), and Part 5 (commencing with Section 9501) of Division 8 of the Health and Safety Code.

- Apprentice Embalmer388
- Cemetery Broker254
- Cemetery Salesperson3,517
- Cremated Remains Disposer218

The Cemetery and Funeral Bureau regulates nearly every aspect of the licensed cemetery and funeral industries. The Bureau has responsibility for overseeing both the fiduciary and the operational activities of the industries. On the financial side, the Bureau oversees funeral preneed trust funds, cemetery endowment care trust funds and special care trust funds. The State Department of Insurance regulates the sale of insurance policies which are at times used to fund preneed funeral contracts. However, the seller must meet the price disclosure and contract requirements under the Bureau's jurisdiction. The Bureau also does not regulate religious, public, city, district, and historic cemeteries.

On the operational side, the Bureau licenses and regulates cemeteries, funeral establishments, cremated remains disposers, cemetery brokers, cemetery salespersons, funeral directors, embalmers, and apprentice embalmers. The Bureau also separately licenses crematories. However until January 1, 2002, the law provides that a cemetery may operate a crematory under its certificate of authority without separate licensing. There are some 77 separately licensed crematories and approximately 100 more operate under a certificate of authority. In the current Legislative Session, legislation sponsored by the Department was enacted to require, among other things, that all crematories must be separately licensed.¹³ Ultimately, this will allow the Bureau to improve consumer protection by better monitoring the operations of crematories in the state.

§ Major changes to the Bureau – Internal changes, strategic planning, regulatory changes, recent legislation, etc.

In addition to the numerous changes summarized above, new legislation has been enacted in recent years which affects the scope of the Bureau's regulatory responsibilities. AB 2877 (Chapter 115, Statutes of 1996), sponsored by the California Funeral Directors Association and authored by Assemblymember Susan Davis, was the first significant piece of legislation dealing with the funeral industry in a number of years.

Beginning in 1997, AB 2877 made significant changes in the way the Bureau regulates and licenses the funeral industry. This measure provided for individual funeral directors to be licensed (new license category) and changed the name for the business license to funeral establishment (from funeral director). The bill also required each funeral establishment to employ a licensed funeral director as manager.

This statute further required that any employee or agent of a licensed funeral establishment who consults with the family of a deceased person or their representatives to arrange funeral services must receive documented training and instruction in laws pertaining to funeral and cemetery

¹³ AB 408, Correa, Chapter 305, Statutes of 2001.

arrangements (oversight and monitoring of a new mandate). The bill revised and added to the education requirements for embalmers and funeral directors. The legislation also authorized funeral establishments to apply to the Bureau to share preparation rooms, body storage facilities, a managing funeral director and apprentice embalmers. **Each of these new provisions increased licensing, application, inspection and enforcement workloads with no increase in budgetary authority or staffing levels.**

In addition, due to the resizing of several companies owning funeral and cemetery businesses, market conditions have increased the number of applications for new funeral establishments, applications to change locations, managers, and ownership as well as applications to share facilities and managers. Each of these changes increases the workload of Bureau staff.

To address the additional workload and to more proactively address enforcement issues, the Bureau sought and obtained a BCP that provided additional staff and funding on a two-year, limited-term basis for FY 2000/01 and FY 2001/02.

§ Major Bureau studies or publications

Subsequent to the Department's 1995 report to the Joint Committee, the Department submitted a report to the Legislature titled *Cemetery and Funeral Programs, Report to the California Legislature, 1996 Calendar Year*.

In 1999, in consultation with the funeral and cemetery industries and other interested parties, the Bureau significantly revised its *Consumer Guide to Funeral and Cemetery Purchases*. Beginning in 1999, funeral establishments and licensed cemeteries must prominently display this publication and make it available to consumers.¹⁴ The *Consumer Guide* addresses legal pricing requirements, embalming, cremation, burial, funerals, prepayment options, and how to file a complaint against a Bureau licensee. A copy of the *Consumer Guide* is attached (Attachment A).

In April 2000, the Bureau Chief testified before the United States Senate Special Committee on Aging regarding funeral and cemetery practices. The Bureau testified at the Committee's request, making recommendations on how states could better regulate funeral and cemetery practices to protect consumers. A copy of that testimony is attached (Attachment B).

§ Information the Bureau provides regarding the licensee

The Bureau provides specific licensing information about its license holders upon request: the name of the licensee, including all business or fictitious names, as it appears on the Bureau's electronic licensing records; the license number; the date the license was issued; and expiration date. The Bureau also verifies if the license is in good standing and whether or not there has been prior disciplinary action against the license. The Bureau provides the address of record of licensed funeral establishments, cemeteries, crematories, cemetery brokers and cremated remains disposers. The Bureau does not provide specific information to the public about licensees' education, awards, or additional certificates.

The Bureau provides licensure certification to other State regulatory agencies upon request.

¹⁴ AB 1709, Alquist, Chapter 286, Statutes of 1998.

The following tables provide licensing data for the past four years:

LICENSING DATA FOR ALL BUREAU LICENSEES	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Licensed California Out-of-State ^b	Total: 7,455	Total: ^a 6,931	Total: 5,888	Total: 8,647
Applications Received	Total: 2,827	Total: 3,390	Total: 3,891	Total: 2,363
Applications Denied	Total: 0	Total: 1	Total: 8	Total: 2
Licenses Issued	Total: 2,750	Total: 2,446	Total: 2,637	Total: 2,476
Renewals Issued	Total: 5,924	Total: 6,272	Total: 6,585	Total: 7,228
Statement of Issues Filed	Total: 0	Total: 0	Total: 2	Total: 2
Statement of Issues Withdrawn	Total: 0	Total: 0	Total: 1	Total: 0
Licenses Denied	Total: 0	Total: 0	Total: 3	Total: 0
^a The FY 1998/99 Agency Statistical Profile Report (ASP) included some 3,101 additional delinquent licenses in the active license category. ^b Data not available.				

OTHER LICENSURE CATEGORIES ^a	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Certificates/Approvals	Total: 689	Total: 627	Total: 419	Total: 562
Apprentice Embalmer	467	519	^b 172	388
Approval to Train Apprentices	222	108	247	174
Certificates/Approvals Issued	Total: 333	Total: 209	Total: 340	Total: 267
Apprentice Embalmer	111	101	93	93
Approval to Train Apprentices	222	108	247	174
Renewals Issued (by type)	n/a	n/a	n/a	n/a
^a This table includes Apprentice Embalmer Certificates and Approvals to Train Apprentice Embalmers. Approvals to Train are not issued a certificate or license, and are only given approval for the current year, expiring December 31 st . A Funeral Establishment is required to apply for Approval to Train each year only if it intends to train apprentice embalmers in that year. Apprentice Embalmer Certificates are non-renewable and expire six years from the date of issuance. ^b Apprentice embalmer files were reduced 67% due to the abandonment of files for apprentices who failed to complete the nonrenewable apprenticeship requirements.				

BUDGET AND STAFF

Current Fee Schedule and Range

§ **Fees which are the main source of revenues. When renewal is required. Date of last fee adjustment. Any plans to increase fees and for what reasons.**

Revenues collected by the Bureau are deposited into one of two funds that provide funding for Bureau operations. Cemetery and crematory related revenues are deposited into the Cemetery Fund, and the funeral related revenues are deposited into the State Funeral Directors and Embalmers Fund (Funeral Fund).

The cremation and interment fee paid by cemeteries and crematories is the main source of revenue for the Cemetery Fund. Licensed cemeteries and crematories are required to pay, on a quarterly basis, \$8.50 for each burial, entombment, inurnment or cremation which they conduct. Last fiscal year (FY 2000/01), the Bureau collected \$1.5 million in quarterly fees. This amount made up approximately 75% of the total revenue collected. The \$8.50 quarterly fee is currently set in statute (BPC §§ 9765, 9786) and is due to expire in April 2003.

The annual renewal fees for embalmer, funeral director and funeral establishment licenses are the main sources of revenue for the Funeral Fund. Last fiscal year (FY 2000/01), the Bureau collected \$900,000 in renewal revenue for these categories. This amount made up approximately 69% of the total revenue collected. There are currently no plans to increase funeral related fees.

All license renewal fees must be paid annually. However, the \$8.50 fee for each interment and cremation performed must be paid by licensed cemeteries and crematories on a quarterly basis.

FEE SCHEDULE	CURRENT FEE	STATUTORY LIMIT	LAST ADJUSTMENT
Funeral Establishment (FD)			
Original Funeral Establishment	\$400	\$300–\$400	1991
Renewal License	\$400	\$300–\$400	1991
Change of Name	\$200	\$100–\$200	1991
Change of Location	\$250	\$150–\$250	1991
Delinquent Renewal	\$600	\$600	1991
Assignment License Application	\$300	\$200–\$300	1991
Preneed Report	\$200	\$100–\$200	1991
Late Fee Preneed Report	\$300	150% of renewal	1991
Approval to train apprentice embalmers	\$100	\$50–\$100	1991
Change Preneed Trustee, Manager, Corp. Officer	\$50	\$25–\$50	1991
Embalmer (EMB)			
Application & Examination	\$150	\$100–\$150	1991
Renewal	\$100	\$75–\$125	1991

FEE SCHEDULE	CURRENT FEE	STATUTORY LIMIT	LAST ADJUSTMENT
Delinquent Renewal	\$150	150% of renewal	1991
Apprentice Embalmer (AE)			
Registration	\$60	\$30-\$60	1991
Funeral Director (FDR)			
Examination	\$100	\$75-\$100	1991
Application	\$200	\$100-\$200	1997
Renewal	\$200	\$100-\$200	1997
Delinquent renewal	\$300	150% of renewal	1997
Other Funeral-Related Fees			
Name change (individual)	\$40	\$20-\$40	1991
Duplicate/lost license	\$40	\$20-\$40	1991
Cemetery – Certificate of Authority (COA)			
Renewal	\$400	\$400	1995
Quarterly fee per interment/cremation	\$8.50	\$8.50	1997
Delinquent renewal		No fee authority	
Initial license filing fee	\$400	\$400	1995
Additional filing fee per day (\$900 max)	\$100	\$100	1995
Crematory (CR)			
Renewal	\$400	\$400	1995
Quarterly fee per cremation	\$8.50	\$8.50	1997
Delinquent renewal		No fee authority	
Initial license filing fee	\$400	\$400	1995
Additional filing fee per day (\$900 max)	\$100	\$100	1995
Cemetery Broker (CEB)			
Original license & examination	\$400	\$400	1995
Reexamination	\$100	\$100	1995
Renewal	\$300	\$300	1995
Delinquent renewal	\$325	\$325	1978
Reinstatement	\$25	\$25	1995
• Cemetery Broker Additional (CBA)/Branch (CBB)			
License	\$100	\$100	1995
Renewal	\$100	\$100	1995
Delinquent renewal	\$125	\$125	1978
Cemetery Salesperson (CES)			
License	\$30	\$30	1990
Renewal, transfer, reinstatement	\$25	\$25	1995
Delinquent renewal	\$32.50	\$32.50	1978
Crematory Manger (no license, examined only)			
Examination		No fee authority	
Cemetery Manger (no license, examined only)			
Examination		No fee authority	
Cremated Remains Disposer (CRD)			
Registration	\$100	\$100	1985
Renewal	\$50	\$50	1985
Delinquent renewal	\$75	\$75	1985
Other Cemetery/Crematory-Related Fees			
Change of name, address, duplicate license	\$25	\$25	1995

Revenue and Expenditure History

As stated above, the majority of revenue to the Cemetery Fund is derived from the \$8.50 cremation and interment fee; the largest revenue source for the Funeral Fund is renewal fees for embalmer, funeral director and funeral establishment licenses.

In the following chart, the projected revenue to the Funeral Fund is based on a conservative average of past years. Revenues projected for the Cemetery Fund include the deletion in FY 2002/03 of the cremation and interment fee. Revenues collected for both the Funeral Fund and the Cemetery Fund are projected to exceed expenditures through FY 2002/03.

The sunset provision on the \$8.50 interment fee in April, 2003, will cause the Cemetery Fund revenues to decline significantly from \$1.9 million in FY 2001/02 to \$1.5 million in FY 2002/03. The full impact of the fee loss on revenues will not be fully seen until FY 2003/04 when revenues will plunge to \$501,000 – well below projected expenditures.

Funeral Fund						
Revenues	ACTUAL				PROJECTED	
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	FY 2001/02	FY 2002/03
Licensing Fees	\$ 1,045,000	\$ 1,137,000	\$ 1,121,000	\$ 1,135,000	\$ 1,090,000	\$ 1,090,000
Fines & Penalties	\$ 9,000	\$ 46,000	\$ 5,000	\$ 32,000	\$ 25,000	\$ 25,000
Other						
Interest	\$ 37,000	\$ 33,000	\$ 63,000	\$ 111,000	\$ 63,000	\$ 63,250
TOTALS	\$ 1,091,000	\$ 1,216,000	\$ 1,189,000	\$ 1,278,000	\$ 1,178,000	\$ 1,178,000

Cemetery Fund						
Revenues	ACTUAL				PROJECTED	
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	FY 2001/02	FY 2002/03
Licensing Fees	\$ 1,794,000	\$ 1,832,000	\$ 1,711,000	\$ 1,778,000	\$ 1,781,000	\$ 1,410,000
Fines & Penalties	\$ 19,000	\$ 24,000	\$ 19,000	\$ 121,000	\$ 23,000	\$ 23,000
Other						
Interest	\$ 138,000	\$ 59,000	\$ 39,000	\$ 88,000	\$ 71,000	\$ 82,000
TOTALS	\$ 1,951,000	\$ 1,915,000	\$ 1,769,000	\$ 1,987,000	\$ 1,875,000	\$ 1,515,000

Funeral Fund						
Expenditures	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	FY 2001/02 (Projected) ^a	FY 2002/03 (Projected)
Personnel Services	\$ 499,800	\$ 297,330	\$ 332,520	\$ 391,000	\$ 653,310	\$ 666,570
Operating Expenses	\$ 480,200	\$ 285,670	\$ 319,480	\$ 376,000	\$ 627,690	\$ 640,430
(-) Reimbursements						
(-) Distributed Costs						

TOTALS	\$ 980,000	\$ 583,000	\$ 652,000	\$ 767,000	\$ 1,281,000	\$ 1,307,000
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^a Projected expenditures are based on the assumptions:

1. The proposed Funeral Fund BCP will be approved and become effective in FY 2002/03.
2. The budget will be fully expended.

Cemetery Fund						
Expenditures	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	FY 2001/02 (Projected) ^a	FY 2002/03 (Projected)
Personnel Services	\$ 664,000	\$ 486,540	\$ 528,870	\$ 421,000	\$ 660,450	\$ 659,430
Operating Expenses	\$ 637,000	\$ 467,460	\$ 508,130	\$ 398,000	\$ 634,550	\$ 633,570
(-) Reimbursements						
(-) Distributed Costs						
TOTALS	\$ 1,301,000	\$ 954,000	\$ 1,037,000	\$ 819,000	\$ 1,295,000	\$ 1,293,000

^a Projected expenditures are based on the assumption that the budget will be fully expended.

Expenditures by Program Component

The following tables show that both programs spent the highest percentage of total expenditures on enforcement costs. Costs figured into the enforcement category include salaries and operating expenses for six field staff as well as complaint mediation and audit staff. Enforcement costs additionally include the prosecution costs for cases submitted to the AG and to the Office of Administrative Hearings.

Licensing cost figures were derived from salaries of four employees assigned to licensing operations and the operating expenses for those employees. The licensing costs also include expenditures associated with processing and qualifying applicants for the Bureau's licensing examinations, examination development and examination administration.

Administrative costs include Bureau management and clerical support, which includes salaries, benefits and operating costs.

Funeral Budget					
Expenditures by Program Component	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	Average % Spent by Program
Enforcement	\$ 642,672	\$ 382,324	\$ 427,574	\$ 506,220	66%
Licensing	\$ 192,879	\$ 114,743	\$ 128,324	\$ 153,400	20%
Administrative	\$ 144,449	\$ 85,932	\$ 96,103	\$ 107,370	14%
TOTALS	\$ 980,000	\$ 583,000	\$ 652,000	\$ 767,000	

Cemetery Budget					
Expenditures by Program Component	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	Average % Spent by Program

Enforcement	\$ 922,675	\$ 676,581	\$ 735,445	\$ 580,838	71%
Licensing	\$ 206,475	\$ 151,404	\$ 164,577	\$ 129,979	16%
Administrative	\$ 171,850	\$ 126,015	\$ 136,978	\$ 108,183	13%
TOTALS	\$ 1,301,000	\$ 954,000	\$ 1,037,000	\$ 819,000	

Fund Condition

§ Reserve level, spending trends, budget projections, adequacy of fees. Comparison of Revenues, Expenditures, and Reserves.

The reserve level of the Funeral Fund has increased in recent years primarily due to the increased revenues from the recently-established funeral director license. Legislation sponsored by the funeral industry established this new license category for the individual funeral in 1997.

Historically, the Funeral Board and Program had an expenditure authority of \$750,000, and a position authority of six PY's. When the Board's functions were transferred to the Department in 1996, considerable backlogs existed in all areas of the regulatory program; consequently, expenditures generated in the licensing and oversight of embalmers, funeral establishments and apprentice embalmers exceeded the approved budgeted expenditure authority for the Funeral Fund, and the Department had to utilize its flexibilities under Performance Based Budgeting (PBB) in order to meet the budgetary demands.

The extensive backlogs under the Board continued due to budgetary limitations. Having only one clerical position for licensing operations aggravated licensing backlogs. In an effort to comply with regulatory licensing timelines and to reduce the substantial backlog, the Department reassigned staff to process funeral license applications. Without the expenditure authority, however, this action increased spending to near the maximum permitted under PBB.

In 1997, new legislative mandates also increased the Bureau's licensing and enforcement workload, requiring individual funeral directors to be licensed (new license category), and funeral counselors to receive specified training (oversight and monitoring of a new mandate). The legislation also authorized funeral establishments to apply to the Bureau to share preparation rooms, body storage facilities, a managing funeral director and apprentice embalmers. **Each of these new provisions increased licensing, application, inspection and enforcement workloads with no increase in budgetary authority or staffing levels.**

Effective in FY 2000/01, a BCP provided funding for four positions for licensing and enforcement operations, on a two-year, limited-term basis. The BCP provided \$368,000 in FY 2001/02 (including equipment) and \$329,000 in FY 2001/2002. Those amounts also included a \$49,000 ongoing authorization for examination development. The Bureau is currently pursuing a BCP which proposes that three of the limited-term positions and funding be made permanent. This is included as a recommendation in Part 2 of this Report.

While there is no current statutorily mandated reserve level, converting the limited-term positions, which expire June 30, 2002, to permanent would not only address licensing and

enforcement issues, but would also return the Funeral Fund to an acceptable reserve level over the next few years. Part 2 of this Report contains a recommendation which would limit fund reserve levels.

The reserve level of the Cemetery Fund has been maintained at an adequate level for the past two fiscal years. However, the main source of revenue for the Cemetery Fund, the cremation and interment fee, is scheduled to sunset April 1, 2003. Since this would result in a loss of 75% of the revenues collected for deposit into the fund, the fund's resources are projected to be exhausted in FY 2003/04. The revenue loss would result in a projected reserve shortfall of 5.8 months in FY 2003/04 – meaning the Bureau would lack resources to continue operations less than five months into the fiscal year. In FY 2004/05, the reserve would sink to a 13.4 month shortfall – effectively prohibiting the Bureau from operating altogether.

The recent budget history of the Cemetery Fund is based upon the utilization of the interment and cremation fee to fund ongoing operations in addition to repaying the loans mentioned above. The BCPs in 1997 (which provided limited-term funding) and 1999 (which provided permanent positions and funding) were based in part upon the revenues generated from the increased fee.

- The 1997 BCP provided funding for FY 1997/98 and FY 1998/99, and limited term positions for Cemetery Program operations. The BCP provided a total Cemetery Program appropriation of \$1 million for FY 1997/98.
- The 1999 BCP provided permanent funding and positions for Cemetery Program operations. The BCP authorized an annual spending authority of \$1.3 million for continued cemetery operations.

The projected shortfalls in the Cemetery Fund would require the Bureau to drastically cut its cemetery and crematory enforcement and licensing operations. Such cuts would result in backlogs in all enforcement and licensing activities, failure to address consumer complaints, and eliminate essential consumer protection operations.

Analysis of Fund Condition – Funeral Fund	FY 1999-00	FY 2000/01	FY 2001/02	FY 2002/03 (Projected) ^a	FY 2003/04 (Projected)	FY 2004/05 (Projected)
Total Reserves, July 1	\$ 1,034,000	\$ 1,571,000	\$ 2,084,000	\$ 1,981,000	\$ 1,861,000	\$ 1,716,000
Total Rev. & Transfers	\$ 1,189,000	\$ 1,278,000	\$ 1,178,000	\$ 1,178,000	\$ 1,178,000	\$ 1,178,000
Total Resources	\$ 2,223,000	\$ 2,851,000	\$ 3,262,000	\$ 3,159,000	\$ 3,039,000	\$ 2,894,000
Total Expenditures	\$ 652,000	\$ 767,000	\$ 1,281,000	\$ 1,298,000	\$ 1,324,000	\$ 1,350,000
Reserve, June 30	\$ 1,571,000	\$ 2,084,000	\$ 1,981,000	\$ 1,861,000	\$ 1,716,000	\$ 1,543,000
MONTHS IN RESERVE	24.6	19.5	18.3	16.9	15.2	13.7
^a Includes proposed BCP to convert positions from Limited Term to Permanent.						

Analysis of Fund Condition – Cemetery Fund	FY 1999/00	FY 2000/01 ^a	FY 2001/02	FY 2002/03 ^b (Projected)	FY 2003/04 (Projected)	FY 2004/05 (Projected)
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Total Reserves, July 1	\$ 349,000	\$ 455,000	\$ 960,000	\$ 690,000	\$ 163,000	\$ (655,000)
Total Rev. & Transfers	\$ 892,000	\$ 1,324,000	\$ 1,025,000	\$ 766,000	\$ 501,000	\$ 501,000
Total Resources	\$ 1,241,000	\$ 1,779,000	\$ 1,985,000	\$ 1,456,000	\$ 664,000	\$ (154,000)
Total Expenditures	\$ 1,037,000	\$ 819,000	\$ 1,295,000	\$ 1,293,000	\$ 1,319,000	\$ 1,345,000
Reserve, June 30	\$ 204,000	\$ 960,000	\$ 690,000	\$ 163,000	\$ (655,000)	\$ (1,499,000)
MONTHS IN RESERVE	3.0	8.9	6.4	1.5	(5.8)	(13.4)

^a Beginning balance reflects a \$251,000 prior year adjustment (\$204,000 + \$251,000 = \$455,000).

^b Interment fees (\$8.50) are discontinued effective April 2003 with last loan payment installment to CSLB.

The Bureau recommends that the \$8.50 fee should be continued by removing the sunset provision. At the maximum level of \$8.50, the fee would generate an estimated \$1.4 million annually, allowing the Bureau to continue to address its enforcement challenges and proactively inspect crematories and cemeteries, respond to consumers complaints, examine trust funds and trust fund reports, take administrative action against violations, administer examinations, issue licenses, and conduct outreach to consumers and licensees.

The chart below gives a Fund Condition Analysis of the Cemetery Fund if the interment and cremation fee were maintained at \$8.50 and spending were continued at the current appropriated levels.

Fund Condition if Interment and Cremation Fee were maintained at \$8.50						
Analysis of Fund Condition – Cemetery Fund	FY 1999/00	FY 2000/01 ^a	FY 2001/02	FY 2002/03 ^b (Projected)	FY 2003/04 (Projected)	FY 2004/05 (Projected)
Total Reserves, July 1	\$ 349,000	\$ 455,000	\$ 960,000	\$ 690,000	\$ 534,000	\$ 1,101,000
Total Rev. & Transfers	\$ 892,000	\$ 1,324,000	\$ 1,025,000	\$ 1,137,000	\$ 1,886,000	\$ 1,886,000
Total Resources	\$ 1,241,000	\$ 1,779,000	\$ 1,985,000	\$ 1,827,000	\$ 2,420,000	\$ 2,987,000
Total Expenditures	\$ 1,037,000	\$ 819,000	\$ 1,295,000	\$ 1,293,000	\$ 1,319,000	\$ 1,345,000
Reserve, June 30	\$ 204,000	\$ 960,000	\$ 690,000	\$ 534,000	\$ 1,101,000	\$ 1,642,000
MONTHS IN RESERVE	3.0	8.9	6.4	4.9	9.8	14.6

^a Beginning balance reflects a \$251,000 prior year adjustment (\$204,000 + \$251,000 = \$455,000).

^b If interment fees are maintained at \$8.50. The last loan payment installment to is scheduled to be paid to CSLB in April 2003.

LICENSURE REQUIREMENTS

Education, Experience and Examination Requirements

Funeral Director – To qualify for the examination, an applicant must be 18 years of age, possess an Associate of Arts or Science degree, or the equivalent, or a higher level of education, and must not have committed acts or crimes constituting grounds for denial of licensure under BPC § 480. There are no experience requirements for the funeral director license (BPC § 7619). Prior to the establishment of the funeral director license as an individual license, the manager of the funeral establishment was required to pass the funeral director examination. When the new

license category was established, a grandfather provision allowed those who had previously passed the examination to become licensed as funeral directors without further meeting examination or education requirements.

Embalmer – To qualify for the examination, an applicant must be 18 years of age; have not committed acts or crimes constituting grounds for denial of licensure under BPC § 480; be a high school graduate (or equivalent); have successfully completed a one-year course in an approved embalming school; have completed a two-year apprenticeship in a licensed California funeral establishment under a supervising embalmer and have assisted in embalming no fewer than 100 human remains. The establishment must be approved by the Bureau for training apprentices, and the supervising embalmer must have at least two years of practical experience as a California-licensed embalmer. A person who has practiced as a licensed embalmer in another state or country for three of the last seven years and whose license has never been suspended or revoked for unethical conduct is not required to serve an apprenticeship in California (BPC §§ 7642–7662; CCR §1235).

Cemetery Broker (Cemetery Broker Branch; Cemetery Broker Additional) – To qualify for the examination, an applicant must be a California resident and must have at least two years experience as a cemetery salesperson prior to the application date. An applicant may petition the Bureau to waive the two-year requirement by demonstrating the equivalent of two years general cemetery experience. The applicant must have not committed acts or crimes constituting grounds for denial of licensure under BPC § 480. Prior to issuing the license, an applicant who does not also have a certificate of authority must provide a \$10,000 security bond; and if the application is for a corporate cemetery broker license, the candidate must have a resolution authorizing the applicant to act as cemetery broker on behalf of the corporation. A cemetery broker license may be issued to a corporation, a partnership or an individual (BPC §§ 9700-9700.6).

Cemetery Manager – To serve as a cemetery manager, an applicant must provide his or her name, address, and date of birth, and successfully pass the cemetery manager examination. The cemetery manager requirement is established by regulation and provides that in addition to the examination, an individual must have two years cemetery experience or the equivalent in a cemetery of the same size and type of operation as the one he or she is proposing to manage (CCR § 2326.1(a)). The Bureau does not have authority to charge a fee for the cemetery manager examination.

Crematory Manager – To serve as a crematory manager, an applicant must provide his or her name, address, and date of birth, and successfully pass the crematory manager examination (BPC § 9787; CCR § 2326.1(b)). The Bureau does not have authority to charge a fee for the cemetery manager examination.

Cremated Remains Disposer – Applicants are registered rather than licensed, and must state whether a boat or aircraft will be used to scatter cremated remains, and include the description, identification, registration and documentation number, indicate area(s) to be served, and provide the address and phone number of any storage facility being used to store cremated remains. There are no experience or examination requirements for this registration (BPC §§ 9740-9749.5).

Cemetery Salesperson – Applicants must be employed and work under a licensed cemetery broker and have committed no acts or crimes constituting grounds for denial of licensure under BPC § 480. There are no experience or examination requirements for this license.

Cemetery (Certificate of Authority) – Applicants for a Certificate of Authority for operation of a cemetery, must provide a copy of (1) the Articles of Incorporation, (2) the land use or zoning permit, (3) evidence of property ownership, (4) a permit to sell and issue securities, (5) a declaration of dedication to cemetery purposes certified by the county recorder, and (6) the endowment care trust agreement executed by the cemetery board of directors. The applicant must also submit independent confirmation of deposit of the initial contribution to the endowment care fund, provide a detailed map of the cemetery, post a \$50,000 fidelity bond on officers and employees, and provide specified information about the incorporators, directors, officers, and trustees. The applicant must designate a cemetery manager (as described above); present a complete detailed financial statement; a statement of the size, location and topography of the cemetery property and the water available; the proposed plan of operation; the amount deposited into the endowment care fund; and the proposed rate of future contributions.

Crematory – Applicants must provide a copy of (1) the Articles of Incorporation (for a corporation) or partnership agreement (for a partnership), (2) the land use or zoning permit, (3) evidence of property ownership; and (4) the permit to operate a crematory issued by the local air pollution control district. The applicant must also provide a detailed financial statement; the proposed plan of operation, and other specified documents and plans; a written contract with a licensed cemetery for final disposition of unclaimed remains; and designate a crematory manager (as described above).

Funeral Establishment – Applicants must be 18 or older; have committed no acts or crimes constituting grounds for denial of licensure under BPC § 480; employ a licensed funeral director (as described above) who is designated to manage, direct and control its activities. The business must have specified facilities and equipment. A funeral establishment license may be held by a corporation, a partnership or by a sole owner.

§ Verification of applicant information. Applicant criminal history, prior disciplinary action, and other unlawful acts.

The Bureau requires applicants with educational requirements to submit transcripts or diplomas as proof of meeting the requirement. Applicants for the funeral director and embalmer examinations are required to submit fingerprint cards for background investigation. If an applicant for the cemetery broker examination answers “yes” regarding prior criminal convictions, fingerprint cards are requested for background investigation. Applicants with prior convictions must provide a copy of: the police report, court records of convictions, verification of restitution and verification of successful completion of probation. Applicants for the cemetery and crematory manager examinations are not fingerprinted.

§ Examination Passage Rates. Justification for examinations. Occupational analysis and validation.

The Department's Office of Examination Resources (OER) has developed new examinations annually since 1997. Meetings with Subject Matter Experts (SME) were held in 1997 to develop test plans for these programs shortly after DCA assumed responsibility for the exams from the former Cemetery Board and Board of Funeral Directors and Embalmers. With a few minor changes, the test plans are still in use. Only the embalmer examination tests detailed knowledge of a trade as well as knowledge of related laws and regulations. The other examinations test knowledge of laws and regulations.

The Funeral Fund BCP in FY 2000/01 provided funding for the Bureau to conduct an Occupational Analysis of embalming and funeral directing over a two-year period, and for ongoing examination resources. The Bureau has contracted with OER to conduct both studies. The Occupational Analysis of the practice of embalming in California was begun by OER in FY 2000/01; and the Occupational Analysis of the funeral director practice is being conducted in the current fiscal year (FY 2001/02). The OER cost to the Bureau is \$56,000 for each occupational analysis.

The Bureau is currently working with OER to evaluate moving the Bureau's examinations to a computer-based format. Under this format, the Bureau would qualify applicants to sit for the examination, which applicants could take at any of a number of test sites throughout the state. Since the Bureau's crematory manager and cemetery manager examinations have no fee authority, the Bureau would be unable to offer those examinations in a computer-based format.

Currently, those wishing to sit for any of the Bureau's examinations can obtain applications and study guides from the Bureau office, or access them on the Bureau's Internet site. The Bureau also provides online access to the laws and regulations that it administers.

Cemetery and Funeral Bureau				
YEARS	^a NATION-WIDE		CALIFORNIA ONLY	
	TOTAL CANDIDATES	PASSAGE RATE	TOTAL CANDIDATES	PASSAGE RATE
FY 1997/98	n/a	n/a	595	67%
FY 1998/99	n/a	n/a	1149	63%
FY 1999/00	n/a	n/a	533	63%
FY 2000/01	n/a	n/a	359	60%
^a National Examinations are not accepted for licensure in California. The Bureau administers five different types of examinations. The figures above include all examinations administered during the fiscal year. The number of candidates includes scheduled candidates who failed to appear for the examination.				

Funeral Director Examination				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
CANDIDATES	347	^a 1049	98	96
NO SHOWS	15	50	5	5
^b PASS %	67%	64%	63%	53%
^a July 1, 1999 legislation requiring a two-year degree went into effect. The June 1999 exam was the last exam given before the two-year degree requirement took effect (623 candidates scheduled).				
^b Pass % = The number of candidates who passed divided by the number of candidates minus no shows.				

Embalmer Examination				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
CANDIDATES	164	57	170	87
NO SHOWS	3	4	5	6
^a PASS %	57%	45%	62%	63%
^a Pass % = The number of candidates who passed divided by the number of candidates minus no shows.				

Cemetery Broker Examination				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
CANDIDATES	25	14	36	15
NO SHOWS	5	4	2	2
^a PASS %	90%	100%	56%	69%
^a Pass % = The number of candidates who passed divided by the number of candidates minus no shows.				

Cemetery Manager Examination				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
CANDIDATES	21	15	71	57
NO SHOWS	6	2	26	24
^a PASS %	80%	54%	80%	70%
^a Pass % = The number of candidates who passed divided by the number of candidates minus no shows.				

Crematory Manager Examination				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
CANDIDATES	38	14	158	104
NO SHOWS	5	1	46	34
^a PASS %	91%	77%	62%	54%
^a Pass % = The number of candidates who passed divided by the number of candidates minus no shows.				

The Bureau offers all five of its examinations twice a year. Funeral law requires the embalmer examination to be given at least once a year, however the Bureau has found it more workable for students graduating from embalming schools to offer the examinations at least twice during the year.

The Bureau's cemetery manager and crematory manger examinations currently have no fee authority for examination administration or development. In order to administer these examinations, revenues must be redirected from other Cemetery Fund resources. Redirecting resources from licensing or enforcement operations can result in delays in processing licensing applications, diminished enforcement operations and weakened consumer protection. Furthermore, it is significant to note that nearly one third of those candidates scheduled for these two examinations do not show up. This intensifies the loss to the Bureau because scheduling and examination preparation must still be completed for candidates who do not appear to take the examination.

No certificate or license is issued upon successfully passing the cemetery manager or crematory manager examination. Candidates who successfully pass either of the examinations are deemed qualified to act in that capacity. To be appointed to act as a manager, the Bureau requires a written resolution from the cemetery authority or crematory appointing the (eligible) candidate as the manager. In addition to passing the examination, a cemetery manger must also have two years cemetery experience or the equivalent in a cemetery of the same size and type of operation.

§ Application Processing Timeframes

Processing times for the funeral-related examination applications are established in regulation. The final filing date for submitting examination applications has varied between 30 to 60 days. Currently the Bureau requests applications be submitted 60 days prior to the examination in order to allow adequate processing time to complete deficient applications. Scheduling letters are mailed approximately 30 days prior to the examination. Applications are evaluated upon receipt and candidates are sent an acknowledgement or deficiency letter within 7 to 10 days. This does not include time for mail distribution or cashiering done within the Department.

Examination results are mailed within 45 days from the date of the examination. Candidates who have met all requirements are issued a license number immediately with their pass letter. However, candidates who pass the embalmer examination cannot be issued a license until they have completed a two-year apprenticeship. In some cases, this has already been completed and allows for the issuance of a license immediately. Prior to issuing the license, broker candidates who do not also hold a certificate of authority must provide a \$10,000 security bond. If the application is for a corporate broker license, the candidate must have a resolution from the corporation authorizing them to act as cemetery broker for the corporation prior to issuing the license.

The Bureau has not yet been able to develop processes for online license application processing (initial and renewal licenses). While the Department was one of 20 state agencies invited to participate in a current eBusiness Center pilot project; the Bureau was not targeted to participate in this pilot because of the small size of its licensing population.

AVERAGE DAYS TO	FY 1997/98 ^a	FY 1998/99 ^a	FY 1999/00	FY 2000/01
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RECEIVE LICENSE				
Application to examination			30	30
Examination to issuance			60	60
Total Average Days			90	90
^a No data available for FY 1997/98 and FY 1998/99				

Continuing Education/Competency Requirements

§ Changes made since last review to assure competency. Verification of continuing education or other competency requirements.

In 1996, the California Funeral Directors Association (CFDA) sponsored legislation that included continuing education requirements for funeral directors and embalmers.¹⁵ However, the legislation did not provide an appropriation to implement the continuing education program or any fee authority to fund the Department's increased workload in tracking and monitoring continuing education compliance and approving continuing education providers. Therefore, the Programs were not able to implement the continuing education requirements.

In 1999, CFDA sponsored legislation to repeal the continuing education provisions, citing the great difficulty in establishing meaningful criteria and courses.¹⁶

It should be noted that even in the absence of a continuing education mandate, the Bureau still has the ability to impose continuing education requirements as a part of its disciplinary process. The Bureau has made continuing education a part of several stipulated decisions and probation orders.

Comity/Reciprocity With Other States

§ Temporary licensing process. Out of state/country. Anticipated changes or changes made since last review.

There are no temporary licensing provisions for either of the licensing acts which the Bureau administers. The examination requirements for licensure are based upon a knowledge and understanding of California law. Only the embalmer examination tests detailed knowledge of a trade in addition to knowledge of the law. Since the laws relating to cemetery and funeral service vary from state to state, it is impractical to extend California licensure to individuals who have not passed the California licensing examination.

An embalmer from another state or country may become licensed in California without completing a two-year apprenticeship if he or she has been licensed and practiced as an embalmer for at least three of the last seven years in any other state or country and has never been disciplined for unethical conduct. In order to become licensed, the embalmer would have

¹⁵ AB 2877, Davis, Chapter 115, Statutes of 1996.

¹⁶ AB 1379, Granlund, Chapter 241, Statutes of 1999.

to pass the embalmer examination administered by the Bureau, but would not have to complete the two-year apprenticeship otherwise required for embalmers in California.

ENFORCEMENT ACTIVITY

ENFORCEMENT DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Inquiries ^a	Total: 7,905	Total: 4,982	Total: 6,478	Total: 2,241
Complaints Received (by source)	Total: 631	Total: 557	Total: 432	Total: 718
Public	450	354	335	407
Licensee/Professional Groups	17	8	6	32
Governmental Agencies	6	14	16	16
Other (includes internal)	158	181	^b 75	263
Complaints Filed (by type) ^c	Total: 399	Total: 138	Total: 109	Total: 348
Competence/Negligence	152	32	36	30
Unprofessional Conduct	112	60	27	80
Fraud	27	26	14	181
Health & Safety	84	11	14	30
Unlicensed Activity	9	9	10	9
Personal Conduct	15	0	8	18
Complaints Closed	Total: 706	Total: ^d 259	Total: 296	Total: ^e 430
Investigations Commenced	Total: 254	Total: 376	Total: 260	Total: 528
Non-sworn Bureau staff	253	376	259	528
Division of Investigation	1	0	1	0
Compliance Actions	Total: 144	Total: 123	Total: 71	Total: 167
ISOs & TROs Issued	3	1	1	0
Citations and Fines	103	104	29	65
Public Letter of Reprimand	1	5	28	44
Cease & Desist/Warning	37	13	13	58
Referred for Diversion	n/a	n/a	n/a	n/a
Compel Examination	n/a	n/a	n/a	n/a
Referred for Criminal Action	Total: 1	Total: 0	Total: 0	Total: 1
Referred to AG's Office ^f	Total: 7	Total: 0	Total: 9	Total: 15
Accusations Filed	4	1	4	1
Accusations Withdrawn	0	0	0	0
Accusations Dismissed	1	0	0	0
Stipulated Settlements	Total: 6	Total: 3	Total: 1	Total: 3

Disciplinary Actions^g	Total:	9	Total:	6	Total:	1	Total:	5
Revocation		6		12		1		6
Voluntary Surrender		0		0		1		0
Suspension Only		0		5		0		0
Probation with Suspension		3		0		0		0
Probation		0		6		0		2
Probationary License Issued		0		0		0		1
Probation Violations	Total:	0	Total:	0	Total:	0	Total:	0
Suspension or Probation								
Revocation or Surrender								

^a In Both FY 1997/98 and FY 1999/00 the number of inquiries to the Department's Consumer Information Center (CIC) increased significantly due to major disciplinary cases. In March and April of FY 1999/00 CIC received 3,875 inquiries. Significant decrease in calls to CIC in FY 2000/01 is due to restructuring Bureau operations so that the Bureau office handles a number of inquiries.

^b Internal resources were used to pursue action against two large enforcement cases which resulted in a decrease of internally-generated complaints.

^c Does not include complaints alleging contractual, product quality, non-jurisdictional, or miscellaneous violations.

^d Decrease due to the transition of complaint mediation functions and enforcement functions from centralized DCA management to the Bureau.

^e An increase in staffing resulted in a major portion of the complaint backlog to be processed.

^f Includes total number of separate investigations referred; separate investigations against the same respondent may have been consolidated into a single pleading.

^g Decisions may include action against respondents with more than one license being disciplined.

Enforcement Challenges

The Bureau faces numerous challenges in its regulation of the 941 funeral establishments, 177 crematories, and 190 cemeteries throughout the state.

Having only two cemetery field representatives for the entire state means that a licensed cemetery may operate for years without ever being physically inspected by the Bureau. While the law requires crematories to be annually inspected, it does not contain any similar provision for cemeteries. The Bureau may initiate an inspection of a cemetery in response to a complaint, but generally speaking, the Bureau does not have the resources to inspect cemeteries.

On the funeral side, until July 2000, the Bureau had only two field representatives for the entire state. With two field representatives, the Bureau could inspect each funeral establishment about once every four years. Enforcement cases requiring field investigation significantly reduced the Bureau's ability to conduct other inspections. By adding two additional field representatives, the FY 2000/01 BCP has helped to improve the Bureau's oversight ability for funeral establishments. These two positions were approved on a two-year, limited-term basis, and as stated elsewhere in this Report, the Bureau is currently pursuing a BCP to make those positions permanent.

Most of the significant disciplinary actions that the Bureau has taken in recent years were discovered by Bureau field representatives in proactive inspections, or in following up on other

consumer complaints. The following examples demonstrate some of the challenges when inspections uncover violations:

- In February of 2000, a cemetery field representative, investigating a complaint at Woodlawn Cemetery in Compton, found cause to inspect the cemetery grounds and found indications of significant violations. As a result, the Bureau obtained an Interim Suspension Order (ISO) against the cemetery, and began a lengthy investigation of the cemetery's activities. The Bureau also concurrently conducted a criminal investigation of the cemetery's operations. The Bureau ultimately revoked the cemetery's license, and placed Evergreen Cemetery in Los Angeles, operated by the same owners, on probation for five years.

To investigate the case, the Bureau had to redirect staff and resources from other operations to this case. The Bureau contracted for security of the cemetery grounds and with forensic archaeologists to secure and identify bone and casket material found in the cemetery. In the three days following the ISO, the Department received over 2,200 calls from consumers. Bureau staff endeavored to return all calls within 24 hours. In addition, the Bureau set up temporary offices near the cemetery to meet with consumers who had family members buried in the cemetery, meeting with more than 400 people over a four-day period.

- A January 1998 inspection of a Los Angeles crematory found numerous violations in handling human remains. The Bureau obtained an Interim Suspension Order (ISO) against the crematory and the three funeral establishment cremation services – all under common ownership. The businesses, which held more than 40,000 preneed funeral accounts, were eventually required to be sold to new, independent owners.
- In July 1998, an inspection following a complaint led to the Bureau obtaining an ISO against five funeral establishments and a cemetery/crematory in Contra Costa County. The Bureau found numerous violations including delivering cremated remains to families when, in fact, the uncremated bodies were still held in refrigeration. The Bureau revoked the owner's eight licenses through a stipulated settlement.
- In April 2000, an inspection discovered numerous violations at a San Bruno funeral establishment. The owner eventually stipulated to revocation of the funeral establishment license, and surrender of his cremated remains disposer registration. As part of the agreement, the owner withdrew additional applications for a crematory license and a funeral establishment license.

When violations by funeral establishments, cemeteries or crematories become publicly known, enormous consumer concern is generated. Family members are emotionally and financially impacted when grappling with the implications of funeral and cemetery mismanagement.

Because of the seemingly secretive and often private nature of the funeral and burial process, violations of law often are not readily apparent to consumers; and when they are apparent, consumers may be emotionally unwilling to file complaints. Therefore, the Bureau must take a

proactive approach by conducting unannounced inspections and audits, and, when violations are found, take appropriate disciplinary actions.

Enforcement Program Overview

Most of the Bureau's complaints are from consumers alleging that a licensee has violated a specific law or regulation, or they were unhappy with the services provided. The Bureau also generates internal complaints from inspections or "tips" from the industries.

There are no requirements mandating that licensees notify the Bureau of criminal convictions subsequent to licensure. However, the Bureau does have fingerprint requirements for funeral establishment, funeral director, embalmer and apprentice embalmer licenses which result in notification from the Department of Justice of criminal convictions against Bureau applicants and licensees. Depending on the nature of the conviction, the Bureau can initiate a complaint and subsequent administrative disciplinary action.

In addition, the Bureau works closely with other jurisdictional State and local agencies, such as county coroners, public administrators and local registrars of births and deaths, and initiates investigations based on information received from them. The Bureau often works closely with the Department of Health Services, Office of Vital Records (OVR) on issues relating to filing death certificates and permits for disposition of human remains.

The Bureau does not experience many problems obtaining information from both complainants and licensees in response to complaints and investigations. Mediation efforts are difficult and delayed when a complainant is unable to provide copies of contractual documents or other evidence necessary to substantiate a violation of the laws or regulations. Investigations can also be hindered when licensees fail to provide the requested documentation in response to a consumer complaint, or when they fail to provide evidence of correction to violations resulting from an inspection.

The largest number of complaints involves allegations of contractual violations, followed by allegations of unprofessional conduct. Complaints concerning contracts involve both preneed and at need funeral or cemetery services, and most often involve violations of trust fund requirements for preplanned arrangements. Common complaints are that the decedent told their family members that all costs for the funeral and burial had been paid, and additional costs are incurred at time of death that were not included in the contract. Additional allegations involve consumers being charged more than provided for in the contract.

Over the past four fiscal years, the Bureau has entered into thirteen stipulated decisions. These settlements most often involved violations of licensees mishandling human remains. The Bureau will agree to a stipulated settlement when it is determined that the consumer protection issues can be best met, and the existing consumer harm can be best addressed by appropriate settlement terms. The Bureau weighs the benefit of a sometimes lengthy and costly administrative trial against the settlement terms that a licensee is willing to agree to. Only when it appears that the Bureau can obtain the

best terms for the consumer and the general public by entering into a settlement rather than through a full administrative hearing will it agree to settlement terms.

The Bureau has taken steps to assure that it conducts inspections in a fair and consistent manner. In the past year, the Bureau has conducted extensive training sessions with field staff to insure thoroughness and consistency in the inspection of funeral establishments, crematories and cemeteries. The Bureau has developed an extensive inspection protocol and training manual, and is further reviewing and developing its other enforcement operational procedures.

The Bureau conducts inspections of nearly half of California's 941 funeral establishments each year. The Bureau conducts unannounced inspections of funeral establishments as well as initial licensure and change of location inspections.

As specified in BPC § 9720, the law requires an annual unannounced inspection of each of the 77 licensed crematories. An estimated 100 crematories additionally operate under a certificate of authority (COA) at cemeteries in the State. Although only mandated to inspect "licensed crematories," the Bureau monitors and inspects all crematories. As stated previously, this year Department-sponsored legislation was enacted (AB 408, Correa) to remove the crematory license exemption from the COA license, thereby requiring all crematories to be separately licensed. The Bureau believes this will ultimately allow for better oversight of crematory practices in the state.

There is no current statutory requirement for the Bureau to inspect cemeteries. However, the Bureau may initiate a cemetery inspection in investigating consumer complaints, or when it is otherwise appropriate.

The Bureau has oversight of funeral preneed trust funds and cemetery endowment care funds and special care funds. Licensees must file annual reports, and the Bureau audits trust funds to ensure compliance with the laws, verify proper accounting and investing practices and identify any shortages. Audits may be initiated based upon the review of the report, failure to file the report, consumer complaints, or if there is reason to believe the funds are not in compliance or are in jeopardy.

Since the Department assumed the regulatory authority for these professions in 1996, Bureau audits of cemetery trust funds have identified some \$4.2 million in trust fund violations. The Bureau has additionally participated in actions resulting in six criminal convictions, and the Board of Accountancy has taken disciplinary action against a CPA for actions identified by Bureau auditors. Desk audits of annual cemetery trust reports and licensing applications have resulted in over \$1.9 million being repaid to trust funds.

California law grants the Bureau authority to take possession of all books, records, and accounts relating to any cemetery under its jurisdiction where there is probable cause to believe that irreparable loss or injury to the endowment care funds may occur. By statute, the Bureau acts as conservator for the funds in its possession, and manages such funds to ensure that they are maintained in perpetuity for the care of the associated properties. The former Cemetery Board had established conservatorships over eleven trust funds. Since assuming the Board's regulatory

responsibilities, the Bureau has aggressively brought consistency to the administration of the conservatorships, and has sought to place the trust funds into the hands of appropriately licensed cemeteries in a way that ensures the safety and integrity of the trust funds. Currently, the Bureau holds three conservatorships.

On the funeral side, in 1999, the Bureau ordered a Los Angeles funeral establishment to restore more than \$1.6 million to consumer preneed trust accounts. The establishment's former owner was sentenced to two years in prison, and a co-conspirator received a one-year sentence. In 1999 a Bureau field representative provided technical assistance and court testimony in Ventura County's prosecution and conviction of a former funeral establishment owner for fraudulently selling preneed policies to 88 victims. In that case, the convicted defendant was ordered to pay \$90,000 to 85 preneed customers.

§ Complaints referred for investigation, accusation, and result in disciplinary action. Overall increases or decreases in disciplinary action.

The Bureau's mediation and enforcement function addresses all consumer complaints against licensees. Although complaints are often mediated between the disputing parties by Bureau staff, those complaints that appear to be violations of the law are referred to the Bureau's enforcement unit for possible investigation and disciplinary action.

For FY 2000/01, the Bureau received 718 complaints. During the same year, 632 complaints were referred for investigation – an 88% referral rate. Increased Bureau staffing by the addition of two field representatives and two licensing staff provided by the FY 2000/01 BCP made it possible for the Bureau to address a significant number of pending complaints and conduct necessary investigations. This can be clearly seen by comparing the number of complaints referred for investigation in prior years. In FY 1997/98 40% were referred; in FY 1998/99 68% were referred, and in FY 1999/00, 60% of the number of cases received were referred for investigation.

The 718 complaints in FY 2000/01 represent a 66% increase over the 432 complaints received in the prior year. 260 of the 718 complaints came from inspections, licensing and other Bureau enforcement actions. These increased numbers are due to both increased staffing levels and the restructuring of Bureau operations.

The Bureau takes administrative action through the Attorney General's Office (AG), and works with local District Attorneys in criminal actions. The resulting disciplinary action may include: Temporary Restraining Order; Interim Suspension Order; license probation, suspension, or revocation.

Of the large percentage of complaints which are referred to Bureau staff for investigation, a relatively small number are actually referred to the AG's office and result in an Accusation or another type of disciplinary action.

It should be noted that a formal Accusation might also contain a number of complaints that had been referred for investigation. The Bureau also addresses licensee violations through education and compliance, warning letters, verbal warnings, and citations and fines.

NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Complaints Received	631	557	432	718
Complaints Closed	706	259	296	430
Referred for Investigation	253	376	259	^a 632
Accusation Filed	4	1	4	1
Disciplinary Action	9	6	1	5
^a An increase in staffing resulted in a major portion of the complaint backlog being addressed.				

Case Aging Data

§ Time frames for processing complaints, investigating cases, from completed investigation to formal charges being filed, and from filing of the accusation to final disposition of the case.

With a significant increase in the number of complaints in FY 2000/01, a far greater number of cases were referred to the field for investigation. The more seasoned investigators were assigned the more complex and technical investigations. These cases can also be higher profile cases, which generally contributes to increased processing times.

In addition, the fact that the Bureau hired and trained three new field representatives also contributed to the increased time frames. The hiring and training process required significant involvement of the most experienced Bureau staff and Bureau management. Those resources would otherwise have been involved in processing and managing complaints and conducting investigations.

Once a case is submitted to the AG requesting an Accusation, time intervals are largely dependent upon the complexity of the case, the workload of the particular Deputy AG, and the hearing calendar of the Office of Administrative Hearings and Administrative Law Judges.

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Complaint Processing	185	32	78	144
Investigations	63	63	104	215
Pre-Accusation ^a	80	53	68	107
Post-Accusation ^b	419	155	90	201
TOTAL AVERAGE DAYS ^c	747	303	340	^d 667

^a From completed investigation to formal charges being filed.

^b From formal charges filed to conclusion of disciplinary case.

^c From date complaint received to date of final disposition of disciplinary case.

^d Increased times for all categories in FY 2000/01 are due to incomplete and inaccurate data entry of old records. In addition, the Bureau hired and trained 3 new field representatives. The hiring and training process utilized existing staff resources which would otherwise have been involved in processing complaints and conducting investigations.

§ Time frames for closing investigations and AG cases. Average percentage of cases taking over 2 to 4+ years. Any decreases or increases in the percentage of cases being closed each year.

Overall, the Bureau closes 56 percent of its investigations within 90 days. However recruiting and training additional field representatives in FY 2000/01 tended to increase the time frames for closing investigations beyond the 90-day range; as staff were trained, it also resulted in a number of older complaints being addressed and closed.

The vast majority of AG cases are closed less than two years. The Bureau has taken an aggressive stance toward resolving disciplinary cases, and as a result no cases have gone beyond the third year since FY 1997/98.

INVESTIGATIONS CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED
90 Days	335	317	95	55	56
180 Days	40	71	59	45	20
1 Year	33	26	30	70	16
2 Years	5	12	8	35	6
3 Years	1	1	1	6	1
Over 3 Years	0	0	0	1	0
Total Cases Closed	414	427	193	212	
AG CASES CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED
1 Year	1	1	1	2	1
2 Years	2	3	0	3	2
3 Years	4	0	0	0	1
4 Years	0	0	0	0	0
Over 4 Years	0	0	0	0	0
Total Cases Closed	7	4	1	5	
Disciplinary Cases Pending	3	0	3	4	

Citation and Fine Program

The Bureau has cite and fine authority under BPC §§ 125.9 and 148. The reduced number of citations issued in FY 1999/00 reflects the reduced staffing levels at that time. The number of citations and fines increased in the last half of FY 2000/01 due to increased staffing levels and restructuring the regulatory operations as the program was reconstituted into a single Bureau.

The Boards first promulgated cite and fine regulations in 1992 and 1993. In 1997 the Department revised the funeral-related citations to include the newly enacted funeral counselor, funeral director and other provisions.

As a general rule, prior to issuing a citation, the Bureau will attempt to work with the licensee to educate and achieve compliance. However, the seriousness of a violation or lack of cooperation from a licensee may result in the issuance of a citation. Other violations may warrant a letter of warning being issued to the licensee. The Bureau has authority to issue a citation either with or without a fine. All of these different levels of disciplinary action are based on the gravity of the violation, good or bad faith of the licensee, history, willful intent, cooperation, attempt to mitigate and other pertinent facts.

The ratio of the amount of fines assessed to the number of the citations issued has increased each year due repeat violations of the same law, fines for multiple violations within a single citation.

The Bureau has additional authority, outside of BPS § 125.9, to issue citations to cemeteries that file endowment care trust fund reports late. In 1996, the Department sponsored legislation that increased the late-filing fines from \$200 to \$400 a month (for a maximum of five months) for annual cemetery endowment care trust fund reports. Shortly thereafter, the Department adopted regulations necessary to issue citations under the statute. Since that time, the Bureau has exercised that authority in order to bring late-filers into compliance with the law.

CITATIONS AND FINES	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Citations	^a 103	104	^b 19	65
Total Citations With Fines	103	103	19	62
Amount Assessed	\$72,621	\$89,362	\$35,702	\$70,819
Reduced, Withdrawn, Dismissed	12	13	3	6
Amount Collected	\$56,359	\$62,143	\$16,901	\$42,082
^a FY 1997/98 ASP Report incorrectly reflects 95 citations issued.				
^b FY 1999/00 ASP Report incorrectly reflects 29 citations issued.				

Complainant Satisfaction Survey

Although the Department performs satisfaction surveys of the various operations of its bureaus, due to the structural transitions over the past several years, the data collected was not adequate for this specific survey. Therefore, in the summer of 2001, Bureau staff conducted a complaint satisfaction survey by telephone of consumer complaints which were closed over the last four calendar years. Complaints from licensees, governmental entities, and internal sources (Bureau generated complaints) were excluded from the survey.

The survey summarized in the table below received a 23% response rate. The response rate may be due to the fact that complaints are often filed by older consumers following the death of a spouse. At times, due to age-related illnesses, those complainants may be moved to care homes or convalescent hospitals and can no longer be reached.

A review of the data in the table below indicates a staff shortage in 1997 may have contributed to delays in handling complaints satisfactorily. Consumer satisfaction rose from 1997 to 1998, when the services of the Department's Complaint Mediation Division were utilized. Many of the complaints closed in 1998 were also handled by the Mediation Division, which provided a larger staff, more rapid responses and shorter closure time than what the Programs were able to provide. It also provided the Programs' enforcement staff more opportunity to handle the more complex complaints, contributing to overall satisfaction. In 1999 and 2000 the Bureau handled all complaints. The limited staff once again resulted in decreased figures in 1999. However, as the Bureau hired and trained new complaint mediation and enforcement staff, and reviewed and restructured its complaint mediation operations in 2000, consumer satisfaction increased.

It is significant that the survey was conducted in 2001 for complaints filed as far back as 1997. In speaking with consumers, it appeared that consumers at times had filed multiple complaints with various agencies or consumer advocates, and were confused about what services the Bureau had rendered.

Satisfaction with the Bureau also often appears to be dependent upon whether the complaint was resolved in favor of the consumer. The Bureau provides assistance about many issues beyond the Bureau's regulatory scope, such as those involving public cemeteries, monument companies or casket stores, which may not result in satisfactory mediation. In addition, many complaints are filed in the wake of media attention about enforcement actions taken by the Bureau and appear to be a reaction to the publicity.

CONSUMER SATISFACTION SURVEY RESULTS					
QUESTIONS		Percent Satisfied by Calendar Year			
Number of Surveys:	311	1997	1998	1999	2000
Number of Responses:	71				
1. Were you satisfied with knowing where to file a complaint and whom to contact?		76	93	66	83
2. Were you satisfied with the way you were treated and how your complaint was handled when you initially contacted the Bureau?		53	93	80	79
3. Were you satisfied with the information and advice given you about the handling of your complaint and about any further action the Bureau would take?		59	75	80	83
4. Were you satisfied with the way the Bureau kept you informed about the status of your complaint?		59	92	53	70
5. Were you satisfied with the time the Bureau took to process your complaint and to investigate, settle, or prosecute your case?		63	79	60	62
6. Were you satisfied with the final outcome of your case?		50	69	66	70

7. Were you satisfied with the overall service provided by the Bureau?

53

86

73

75

ENFORCEMENT EXPENDITURES AND COST RECOVERY

Average Costs for Disciplinary Cases

§ **Average costs to investigate and prosecute cases. Which case types average more than others. Explain if the Bureau is having any difficulty in budgeting for Prosecution and Hearing costs, and whether cases may have been delayed because of cost overruns.**

The table below captures data relative to the number of cases closed by formal investigations by DOI, the Department's division with sworn peace officer investigators. In FY 1995/96 and FY 1996/97, DOI administered a Cemetery Task Force (CTF) which was established to investigate and prosecute serious allegations of crimes in the licensed cemetery industry in the State. Funding for the CTF ended in FY 1996/97. A number of cases that had been opened under the CTF were closed in the early part of FY 1997/98. The numbers of closed cases alone do not accurately reflect the true nature of the Bureau's enforcement activities during this period.

The table also does not account for the roll-forward funding system that was implemented by the Department several years ago. Under this roll forward system, DOI costs are established at a specific budgeted cost amount based on historical and anticipated workload, and provides for an adjustment to actual costs two years in the future.

Only in unusual circumstances does the Bureau use the DOI in conducting its investigations. The Bureau has found that utilization of the technical expertise of its own field staff is more effective for its investigations. The Bureau does on occasion use DOI to conduct criminal investigations, and present criminal investigations to district attorneys.

The table's footnote indicates that the Bureau closed 340, 275, 191, 183 investigations in the last four fiscal years. Non-sworn Bureau field staff conducted all of these investigations. The Bureau does not separately track the investigatory costs of field staff on a normal case-by-case basis. Therefore, the table remains incomplete.

AVERAGE COST PER CASE INVESTIGATED	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Investigation & Experts	\$0	\$0	\$0	\$12,170
Number of Cases Closed ^a	^b 67	0	1	1
Division of Investigation				
Average Cost Per Case				\$12,170
AVERAGE COST PER CASE REFERRED TO AG	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Prosecution & Hearings ^c	\$0	\$33,900	\$80,978	\$154,834
Number of Cases Referred	7	0	9	15

Average Cost Per Case			\$8,997	\$10,332
AVERAGE COST PER DISCIPLINARY CASE	-	-	-	-
^a For the respective fiscal years, the Bureau also closed 340, 275, 191, 183 investigations conducted by non-sworn Bureau field staff. ^b In the early part of FY 1997/98 the Department's DOI closed 66 cases which had been opened under DOI's Cemetery Task Force. ^c Costs incurred in one year may be the result of cases referred in a prior year.				

Cost Recovery Efforts

The Bureau seeks to recover the costs of investigating and prosecuting its cases from respondents in disciplinary cases to the extent possible under BPC § 125.3. Requests to recover costs are a standard part of each request for administrative action that the Bureau sends to the AG. In recent years, the Bureau has had few cases involving the full administrative hearing process where an order for recovery of reasonable costs can be issued. This is primarily due to the fact that the Bureau's cases are so compelling, respondents are often very willing to talk about settlement. However, that has not prevented the Bureau from obtaining cost recovery in disciplinary cases through stipulated decisions. The Bureau insists that cost recovery be a part of settlement discussions with respondents, and has been successful in including costs in settlements. The Bureau has additionally been successful in recovering costs when ordered.

The Bureau has found additional ways to utilize cost recovery to its advantage on those occasions when revocation takes place and it is unlikely that the Bureau will ever actually collect the costs. When a respondent stipulates to a revocation of his or her license, the Bureau has, on occasion, included the payment of cost recovery as a prior condition to the consideration of any petition for license reinstatement.

COST RECOVERY DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Enforcement Expenditures ^a	\$ 1,565,347	\$ 1,058,905	\$ 1,163,018	\$ 1,087,058
# Potential Cases for Recovery ^b	7	4	1	3
# Cases Recovery Ordered	3	4	1	1
Cost Recovery Ordered	\$ 309,264	\$ 164,987	\$ 31,394	\$ 210,000
Amount Collected	\$ 51,097	\$ 393,514	\$ 8,285	\$ 128,000
^a This is the total expenditures for enforcement by program component for both funds. ^b The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the License Practice Act.				

RESTITUTION PROVIDED TO CONSUMERS

§ **Efforts in obtaining restitution for the individual complainant. Whether the Bureau uses any formal restitution program. The types of restitution that the Bureau attempts to collect, i.e., monetary, services, etc.**

Not only does the Bureau seek cost recovery for its own prosecutory efforts, but also it actively pursues restitution to consumers in its complaint mediation and enforcement actions. The table below demonstrates, not only the restitution ordered by administrative order, but also the restitution obtained by the Bureau in complaint mediation efforts, and through the oversight of consumer trust funds by its Audit Unit.

In FY 1998/99, through resolution of an administrative accusation, the Bureau ordered a Los Angeles funeral establishment to make over \$1.6 million in restitution to consumer trust funds for prepaid funeral costs. Restitution ordered to consumers does not always include a monetary sum; sometimes it includes funeral and cemetery goods and services. In a recent settlement, the probationary order required the licensee to fund specified consumer trust funds as if the contracts had been fully funded. In another order, a Los Angeles cemetery was required to set aside 200 graves to provide for consumers who had prepurchased grave spaces at another cemetery owned by the same company.

In mediating consumer complaints, restitution, adjustments, or the reworking of costs often satisfies the consumer's needs, and resolves the enforcement issue. The mediation restitution costs given to consumers are included in the amount collected below. Although the Bureau does not currently specifically track the compliance of a licensee offering restitution to consumers in mediation cases, the Bureau has found that consumers typically advise the Bureau if the licensee has failed to resolve a matter as agreed. In those cases the Bureau does follow-up with the licensee to ensure restitution.

As Bureau regulations require the consideration of a number of factors when issuing a citation, including the licensee's good or bad faith, extent of cooperation with the Bureau's investigation, and the extent to which the licensee has mitigated or attempted to mitigate any damage or injury caused by the violation, licensees are sufficiently motivated to cooperate.

In its oversight of consumer trust funds the Bureau also seeks restitution on behalf of the consumer. Normally, individual consumers are not aware of trust issues between the Bureau and a licensee. The Bureau independently identifies and investigates the problem and obtains compliance from the licensee by contribution to the trust fund.

In the audit of one Northern California cemetery's endowment care trust fund, the Bureau identified improper trusting practices, and required the cemetery owner to make the same correction at the other cemeteries that it owned in the state. As a result, the company deposited some \$2.2 million into the trust funds of 37 cemeteries.

Although not included in the table, the Bureau has participated in a number of additional cases in which restitution was ordered through criminal or civil courts. From 1996 through 1999, the Bureau and the Department's DOI participated in a number of criminal cases, primarily through the Los Angeles District Attorney and civil cases through the AG's office resulting in some \$ 2.6 million in restitution being ordered to consumers.

In 1999, the Ventura County Sheriff's Department, working with a Bureau field representative, arrested a former funeral establishment owner. He was charged with

grand theft and eventually pleaded no contest to grand theft for taking funeral trust funds, and ordered to pay restitution of \$90,000 to 85 preneed customers.

RESTITUTION DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Amount Ordered	\$0	\$1,645,000	\$0	\$50,000
Audit Oversight of Trust Funds	\$708,246	\$3,274,155	\$556,723	\$335,967
Mediation Refunds Adjustments ^a	\$131,944	\$75,016	\$22,717	\$53,908
Amount Collected	\$731,158	\$4,637,254	\$879,440	\$414,875
^a Consumer may or may not accept restitution offer, or may decline the offer from the licensee.				

COMPLAINT DISCLOSURE POLICY

§ Complaint disclosure policy. The point in the disciplinary process that information made available to the public concerning the licensee. The type of information that is made available. Problems in obtaining particular types of information.

The Department is currently in the process of revising its standards for consumer complaint disclosure. The Department is seeking input from all parties involved, consumers, licensees, professional associations and regulatory and law enforcement agencies. The review has entailed a comprehensive look at the current policy established in 1979 with a view toward educating and informing the consumer and making consumer complaint information easily obtainable and accessible to the public in a timely, fair and accessible manner. The Bureau is involved in the current process and anticipates adopting its specific policy in coordination with the Department's revised standards for consumer complaint disclosure.

The table shows the current types of complaint information provided to those who inquire about licensees. The Bureau discloses filed complaints, citations, fines and letters of reprimand as well as settlements, disciplinary actions, civil and criminal judgments.

COMPLAINT DISCLOSURE TYPES OF INFORMATION PROVIDED	YES	NO
Complaint Filed	X	
Citation	X	
Fine	X	
Letter of Reprimand	X	
Pending Investigation		X
Investigation Completed		X
Arbitration Decision	n/a	
Referred to AG: Pre-Accusation		X
Referred to AG: Post-Accusation	X	
Settlement Decision	X	
Disciplinary Action Taken	X	

Civil Judgment	X	
Malpractice Decision	n/a	
Criminal Violation:		
Felony	X	
Misdemeanor	X	

CONSUMER OUTREACH, EDUCATION AND USE OF THE INTERNET

§ Methods used by the Bureau to provide consumer outreach and education

The Bureau's consumer outreach and education efforts are an integral part of its proactive consumer protection. The Bureau utilizes the resources and expertise of the Department's centralized Consumer Information Center (CIC) and the Communications and Education Division (CED). Both of these divisions play a significant role in the Bureau's efforts to communicate with consumers of cemetery and funeral goods and services.

Many consumers initiate their contact with the Bureau through CIC's toll-free number: 1-800-952-5210. The CIC receives two primary types of calls: complaints and licensing inquiries. Complaints received by CIC are immediately referred to the Bureau.

The CED has helped the Bureau in developing printed material for the public, creating public service announcements for consumers, and responding to media inquiries. In 1999, the Bureau developed English and Spanish public service announcements for radio and television. The announcements encouraged consumers to consider making decisions about funeral and cemetery arrangements in advance and encouraged them to request the *Consumer Guide to Funeral and Cemetery Purchases*.

The Bureau extensively revised its *Consumer Guide to Funeral and Cemetery Purchases* in 1999. Beginning in 1999, the law requires the funeral establishments and licensed cemeteries to prominently display the *Consumer Guide* and make it available to consumers.¹⁷ The guide covers legal requirements regarding pricing, embalming, cremation, burial, funerals, prepayment options, procedures required for death out of state or out of the country, and how to file a complaint against a funeral establishment or state-regulated cemetery. The Bureau is confident that the guide plays a significant role in informing consumers about their choices of funeral and cemetery goods and services.

Since its revision, the Bureau's *Consumer Guide* has gained wide acceptance and received positive feedback. In its comment to the Federal Trade Commission (FTC) regarding the FTC's review of the Federal Funeral Rule, the North American Cemetery Regulators Association (NACRA), an association of executive officers of state and provincial cemetery regulatory agencies, recommended creation of a disclosure brochure that vendors must provide to

¹⁷ AB 1709, Alquist, Chapter 286, Statutes of 1998.

prospective consumers. The NACRA recommended the Bureau's *Consumer Guide*, as an example of such a brochure. In addition, the FTC included the Glossary of Terms from the *Guide* when it revised its own brochure in April 2000.

In April 2000, the Bureau Chief testified before the United States Senate Special Committee on Aging regarding funeral and cemetery practices, making recommendations on how states can better regulate the funeral and cemetery industries and protect consumers. Since that time, the Bureau has received numerous inquiries about the Bureau's regulatory practices from national consumer organizations and state regulatory bodies.

The Bureau endeavors to promote consumer awareness through basic consumer information. Information that provides accurate, usable explanations about consumer rights and options in nontechnical terms is an essential part of consumer awareness and education.

Yet, on a fundamental level, consumer reluctance to address cemetery and funeral arrangements will not be reversed by consumer guides and information. Many consumers will only want the information when they critically need it – when a loved one dies, or when they have a complaint against a licensee. It is important, therefore, that the Bureau not only provide information, but perhaps, more importantly, promote awareness of how consumers can access the information when they need it. Promoting the Department's toll free telephone number (1-800-952-5210) and the Bureau's Internet address (www.dca.ca.gov/cemetery) where consumer information can be accessed is extremely important in providing information to consumers when they need it.

§ Online information offered to consumers about Bureau activities, where and how to file complaints, and licensee information

The Bureau offers online information to consumers in a variety of forms. In FY 2000/01, the Bureau's Web site was accessed more than 4,000 times each week. Online information is offered by posting news releases and other consumer information and announcements. The Bureau posts examination announcements, and provides information about how to file complaints. The *Consumer Guide to Funeral and Cemetery Purchases* can be found and printed from the Web site. The Bureau also provides informational guides such as "Who Has the Right to Make Decisions," regarding who may legally make decisions about disposition of a body.

Summaries of new laws also give consumers and licensees basic information, and a license verification link, where the consumers can look up public information about licensees.

The Bureau provides an online complaint form, which can be filled out online and mailed into the Bureau. It is the Bureau's experience that often consumer complaints require the consumer to send contracts or other documents as a part of their complaint. Because the consumer cannot send copies of original documents online, it can make the intake of online complaints problematic.

§ Conducting online business with consumers/licensees

The Bureau provides licensing applications that can be filled out online, printed and filed with the Bureau; links to access laws and regulations governing the cemetery and funeral industries; fact sheets about licensing requirements; the Bureau publication, *Consumer Guide to Cemetery and Funeral Purchases*; reference numbers; and links to the Federal Trade Commission and the FTC's Funeral Rule. Applicants are currently not able to provide payment online, therefore applications must still be mailed to the Bureau.

§ Online license information and applications (initial and renewal licenses, address changes, etc.)

The Department was one of 20 state agencies invited to participate in a current eBusiness Center pilot project that allows for a one-stop Internet site where all business interactions could be conducted with government. Due to the small size of the Bureau's licensing population, we were not targeted to participate in this pilot. The Department is also evaluating automated systems which would allow each Bureau to search information on an applicant Department-wide, instead of just within each Bureau. We believe the trend will continue toward greater integration of online services into the Bureau's licensing processes.

§ Online testing/examination services for both initial and renewal licenses

The Bureau is currently evaluating the possibility of offering computer-based examinations. Since the Bureau's crematory manager and cemetery manager examinations have no fee authority, the Bureau would likely be unable to offer those examinations in a computer-based format. Currently, none of the Bureau's five licensing examinations are offered online. However examination applications, examination study guides and the related laws are available online.

§ Streamlining of administrative functions necessary to provide the above services and information via the Internet

By offering license and examination applications, licensing requirement information, examination study guides and license verification via the Internet, the Bureau has already streamlined responding to applicant and consumer requests for documents and information. However, issues of examination security and issuance of the license document itself become of greater importance the further the Bureau moves toward offering examination and licensing services online.

§ Ways the Bureau could improve services to consumers/licensees by use of the Internet

In recent years, the Bureau has enhanced its ability to serve consumers and licensees by using the Internet in locating consumer monies which had been held in trust by funeral establishments, but

had been escheated to the Office of the State Controller because of trust account inactivity. The ability to search Social Security Records for licensees who are deceased could enhance the maintenance of licensing records. Verification of the status of corporations over the Internet can also enhance licensing and enforcement operations.

§ Practices occurring outside of the traditional “marketplace” that fall under the Bureau’s jurisdiction. Challenges the Bureau faces with respect to online advice “practice without presence,” privacy, targeted marketing. Plans to regulate Internet business practices

There appears to be a number of businesses that advertise funeral and cemetery services and goods over the Internet. Although California law is explicit about consumer disclosures, price lists and preneed trusting requirements imposed upon those who offer goods and services to California consumers, the prospect of providers from outside of the state can present a number of jurisdictional challenges to the Bureau. In addition, enforcing advertising requirements upon Internet-based marketing presents other challenges.

However, the ability of the consumer to find information can be enhanced by Internet access. In addition, consumers may be more likely to search for providers and compare prices in an unpressured environment by using the Internet.

Since Internet marketing can potentially be initiated from anywhere in the world, it can be particularly difficult to monitor individuals and companies who make sales in California to ensure that they are abiding by the Bureau’s laws and regulations in regard to disclosure, advertising and other marketing issues.

EMERGING ISSUE: RETAIL CASKET SALES “CASKET STORES”

An emerging issue that the Bureau is facing is the retail sellers of caskets and other funeral and cemetery merchandise. These retailers, often referred to as “casket stores,” generally offer caskets, and other (traditionally considered) funeral goods at what is often a discounted price below what licensed funeral establishments offer.

Retail casket sales, and sales of other funeral merchandise, have been an emerging industry since the Federal Trade Commission (FTC) revised its Funeral Rule, effective July 1994. The Funeral Rule which establishes federal standards for funeral industry practices, requires funeral establishments to give consumers accurate, itemized price information and disclosures. In addition, the Funeral Rule prohibits funeral homes from: (1) requiring customers to buy certain funeral goods or services as a condition for furnishing other funeral goods or services, and (2) charging consumers a handling fee for caskets purchased from another source.

Prior to 1994, it was not uncommon for funeral directors to charge an additional fee for caskets purchased elsewhere. However, the FTC ruled that the practice restricted competition, and increased the cost of funerals.

California law, administered by the Bureau, largely mirrors, but is not identical, to the FTC's Funeral Rule. California law prohibits a funeral director from charging a handling fee for a casket purchased elsewhere.

In recent years, more attention has been focused on retail casket sales by industry associations, and by corporate and independent owners of funeral establishments and cemeteries. Legislation was sponsored by CFDA in 1997 to place contract, disclosure and trust fund requirements on casket retailers (SB 816). That legislation was vetoed. In 1998, the Legislature enacted AB 1709 (Alquist, Chapter 286, Statutes of 1998) which placed contract and disclosure requirements upon third party sellers in the general advertising provisions of the Business and Professions Code. In 1999, legislation was introduced to require casket retailers who sell goods on a preneed basis to place the money into trust until time of need. That bill eventually died.

In 1999, the Federal Trade Commission began a review of its Funeral Rule, and requested public comment on a number of issues, including whether the Rule should be modified to revise or clarify the prohibition on casket handling fees. This review brought retail seller issues further to the forefront.

In response to FTC's request, the Bureau stated that:

Since the adoption of the Funeral Rule in 1982, the role and function of the funeral establishment in California has changed significantly. Formerly, funeral goods and services were provided, almost exclusively, through the funeral establishment. Currently, funeral goods and some services come from a variety of providers, such as cemeteries, casket stores, or crematories in addition to the funeral establishment; and the funeral establishment at times functions as the coordinator of those providers. With a shift in how goods and services are provided, it would seem to follow that consumer protection issues, and moreover, the potential for consumer harm, follows the flow of how goods and services are provided. It seems reasonable, therefore that the Commission might give careful consideration to the Funeral Rule's definition of funeral providers.

Regarding casket handling fees, the Bureau further stated:

It would appear that the competitive reluctance of funeral providers to shift overhead costs and profit from the casket mark-up to professional service fees is still a clear dynamic, with respect to casket handling fees. It would seem that true competition in this area could ultimately benefit the consumer.

Ultimately, a number of issues related to retail casket sellers remain outside the scope of the Cemetery and Funeral Bureau's authority. The law does not give the Bureau clear statutory authority over this industry.

2.

BACKGROUND PAPER FOR HEARING: IDENTIFIED ISSUES, QUESTIONS FOR THE BUREAU, AND BACKGROUND CONCERNING ISSUES

In 1993, the Cemetery Board and the Board of Funeral Directors and Embalmers (collectively “the Boards”) came under close scrutiny from the State Legislature. At that time, these semi-autonomous licensing boards separately regulated California’s cemetery and funeral industries under the general umbrella of the Department of Consumer Affairs (Department). That fall, the Senate Committee on Business and Professions, Subcommittee on Efficiency and Effectiveness in State Boards and Commissions (Subcommittee), convened hearings in which these two separate boards, along with other licensing boards within the Department, were reviewed with a view toward improving the efficiency of regulatory boards, eliminating duplicative or overlapping licensing functions and, if need be, eliminate regulatory agencies which no longer serve the public’s need.

In its final report, the Subcommittee recommended that licensure for the cemetery and funeral industry be transferred to a Bureau under the director of the Department.

The following year, reform legislation was introduced which proposed to eliminate the two Boards and transfer their functions to a bureau under the direct authority of the Department. That bill was lobbied heavily by both industries as well as members of the two Boards, and failed as a result.

In 1995, agreement was reached with industry members on legislation to merge the two Boards into a single Board. However, that legislation was derailed by the discovery in Southern California of what appeared to be serious crimes committed at various cemeteries under the Cemetery Board’s jurisdiction. The alleged crimes, which included fraud, embezzlement of endowment care trust funds, the mishandling of human remains and the recycling of grave sites, brought crisis to the state’s cemetery industry and overwhelmed the Board. Urgency legislation transferred the regulatory operations of both Boards to the Department as of January 1, 1996.

In January 2000, the licensing operations for both Programs, which had been administered by the Division of Licensing, were transitioned to the Bureau. In 2000, the Department sponsored legislation that recast the Cemetery Program and Funeral Program into the Cemetery and Funeral Bureau (Bureau).

The Bureau has statutory authority to enforce the licensing and practice acts in the Business and Professions Code relating to the funeral, cemetery and crematory industries. The Bureau also has jurisdiction over specified sections of the Health and Safety Code dealing with human remains, cemetery and cremation provisions.

The Bureau had approximately 9,035 active licensees in FY 2000/01 in nine licensing categories. The Bureau regulates nearly every aspect of the licensed cemetery and funeral industries. The Bureau has responsibility for overseeing both the fiduciary and the operational activities of the industries. On the financial side, the Bureau oversees funeral preneed trust funds, cemetery endowment care trust funds and special care trust funds. The State Department of Insurance regulates the sale of insurance policies, which are at times used to fund preneed funeral contracts. However, the seller must meet the price disclosure and contract requirements under the Bureau's jurisdiction. The Bureau also does not regulate religious, public, city, district, and historic cemeteries.

On the operational side, the Bureau licenses and regulates cemeteries, funeral establishments, cremated remains disposers, cemetery brokers, cemetery salespersons, funeral directors, embalmers, and apprentice embalmers. The Bureau also separately licenses crematories. However until January 1, 2002, the law provides that a cemetery may operate a crematory under its certificate of authority without separate licensing. There are some 77 separately licensed crematories and approximately 100 more operate under a certificate of authority. Legislation sponsored by the Department was enacted to require, among other things, that all crematories must be separately licensed. Ultimately, this will allow the Bureau to improve consumer protection by better monitoring the operations of crematories in the state.

On December 3, 2001, the Bureau submitted a draft sunset report to the Joint Legislative Sunset Review Committee (Joint Committee). This is the first time that the Bureau has been reviewed by the Joint Committee. The following are areas of concern for the Joint Committee, along with background information concerning the particular issue. There are questions that staff has asked concerning the particular issue. The Bureau was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

BUREAU POWERS AND DUTIES ISSUES

ISSUE #1: It is unclear whether the Bureau has explicit authority to conduct regular inspections of licensed cemeteries.

Question #1 for the Bureau: *Does the Bureau have explicit authority to conduct regular inspections of licensed cemeteries? If so, are these unannounced visits? What exactly does the Bureau inspect? If not, would consumers benefit if the Bureau were granted clear authority for inspections? Would the Bureau have sufficient staff and funds to perform these inspections?*

Background: The Bureau conducts inspections of nearly half of California's 941 funeral establishments each year. The Bureau conducts unannounced inspections of funeral establishments as well as initial licensure and change of location inspections. The law requires an annual unannounced inspection of each of the 77 licensed crematories.

The discovery in recent years of mismanagement and violations of the law at cemeteries operated under licenses issued by the Bureau emphasizes a need for ongoing inspections of cemeteries. Current law provides general authority for the Bureau to inspect the operations of licensed cemeteries. However, the law does not explicitly authorize the Bureau to have full access to cemetery operations to conduct physical inspections. The law also does not contain any requirement for the Bureau to conduct periodic inspections of cemeteries. Current law requires the Bureau to examine books and records relating to cemetery trust funds and reports. It also requires the Bureau to inspect books, records, and premises of each licensed crematory. However, the law does not provide the same clear inspection authority for cemeteries.

ISSUE #2: The Bureau is required to examine endowment care funds and endowment care reports. It is unclear whether the Bureau complies with this requirement.

Question #2 for the Bureau: *Does the Bureau comply with this requirement?*

Background: Section 9651 of the Business and Professions Code requires the Bureau to examine the reports filed with it as to their compliance with the requirements of the Health and Safety Code as to the amount of endowment care funds collected and as to the manner of investment of such funds. Section 9652 of the Business and Professions Code generally requires the Bureau to examine the endowment care funds of a cemetery authority under certain specified circumstance but at least once every five years.

ISSUE #3: The Bureau is required to provide registered cremated remains disposers a booklet that includes details about their registration, renewal and statutory requirements. The Bureau has not complied with this requirement.

Question #3 for the Bureau: *Why hasn't the Bureau complied with this requirement?*

Background: Section 9741.1 of the Business and Professions Code provides that the Bureau shall prepare and deliver to each registered cremated remains disposer a booklet that includes, but is not limited to, the following information: details about the registration and renewal requirements for cremated remains disposers; requirements for obtaining state permits to dispose of cremated human remains; state storage requirements, if any; statutory duties pursuant to this article, and other applicable state laws.

BUDGETARY ISSUE

ISSUE #4: The main source of revenue (an \$8.50 cremation and interment fee) for the Bureau's Cemetery Fund will be eliminated as of April 1, 2003.

Question #4 for the Bureau: *What will be the impact to the Bureau if their main source of income is eliminated? How will this impact the Bureau's licensing and enforcement activities? How will this impact consumers and licensees?*

Background: Revenues collected by the Bureau are deposited into one of two funds that provide funding for Bureau operations. Cemetery and crematory related revenues are deposited into the Cemetery Fund, and the funeral related revenues are deposited into the State Funeral Directors and Embalmers Fund (Funeral Fund).

The cremation and interment fee paid by cemeteries and crematories is the main source of revenue for the Cemetery Fund. In 1996, AB 2234 (Willard Murray) raised the burial and cremation fees provided in Sections 9765 and 9786 of the Business and Professions Code from \$ 0.50 to \$8.50 per interment or cremation. The fees were raised in order provide increased funding for the mandated oversight of the cemetery industry by the Department and to generate revenue to fund the enhanced enforcement of the Cemetery Act in response to the crisis in the cemetery industry discovered in 1995.

Licensed cemeteries and crematories are required to pay, on a quarterly basis, \$8.50 for each burial, entombment, inurnment or cremation which they conduct. Last fiscal year (FY 2000/01), the Bureau collected \$1.5 million in quarterly fees. This amount made up approximately 75% of the total revenue collected. The \$8.50 quarterly fee is currently set in statute (Sections 9765 and 9786 of the Business and Professions Code) and is due to expire in April 2003. This will cause the Cemetery Fund revenues to decline significantly from \$1.9 million in FY 2001/02 to \$1.5 million in FY 2002/03. The impact of the fee loss on revenues will not be fully seen until FY 2003/04 when revenues will drop to \$501,000 – well below projected expenditures.

LICENSURE ISSUES

ISSUE #5: It is unclear whether the entry-level requirements for embalmers are adequate, inadequate or duplicative.

Question #5 for the Bureau: *Does the Bureau feel that the existing entry-level requirements for licensure as an embalmer are sufficient or are they duplicative? What quality control measures has the Bureau implemented in order to ensure actual and meaningful compliance with the two-year apprenticeship requirement for embalmers?*

Background: Among other things, Section 7643 of the Business and Professions Code provides that, in order to qualify for a license as an embalmer, the applicant shall have completed at least two years of apprenticeship under an embalmer licensed and engaged in practice as an embalmer in this state in a funeral establishment, which shall have been approved for apprentices by the Bureau and while so apprenticed shall have assisted in embalming not fewer than 100 human remains. This two year apprenticeship requirement is in addition to the requirement to complete a course of instruction of not less than one academic year in an embalming school, approved by the Bureau and accredited by the American Board of Funeral Service Education.

Section 7665(a) of the Business and Professions Code generally requires apprentice embalmers to file a report of apprenticeship upon completion of apprenticeship. Section 7665(b) states that the information contained in the report shall consist of a concise summary of the work done by

the apprentice during the period covered thereby and shall be verified by the apprentice and certified to as correct by his or her supervising embalmer and employer. Upon request of the Bureau, each funeral director in whose establishment an apprenticeship is being or has been, served, and each embalmer under whose instruction or supervision an apprenticeship is being, or has been, served, shall promptly file with the Bureau a report or such other information as may be requested relating to the apprenticeship.

It is unclear whether the course of instruction is duplicative of the two-year apprenticeship. It is unclear whether the Bureau has set specific standards for the apprenticeship. It is unclear whether the Bureau conducts audits or inspections to ensure actual compliance with the apprenticeship requirements.

ISSUE #6: Although the Bureau administers an examination for crematory managers and cemetery managers the Bureau can neither charge a fee for the development and administration of the examination nor do they license or regulate these individuals.

Question #6 for the Bureau: *Does the Bureau feel that minimal competencies to perform as a cemetery manager and crematory manager are necessary for consumer protection? Does the Bureau feel that the current examination adequately checks the competency level of these individuals? What is the actual cost to the Bureau to develop and administer the examination? Does the Bureau feel that the experience requirement for cemetery managers is necessary for consumer protection? Does the Bureau feel that there should be an experience requirement for crematory managers like there is for cemetery managers?*

Background: Section 9787 of the Business and Professions Code provides that each crematory, for which a crematory license is required, shall be operated under the supervision of a manager qualified as such in accordance with rules adopted by the Bureau. Each manager shall be required to successfully pass a written examination evidencing an understanding of the applicable provisions of this code and of the Health and Safety Code of this state.

Title 16, California Code of Regulations, Section 2326.1(a), states that each cemetery for which a new certificate of authority is required shall be operated under the supervision of a managing officer qualified as such by the board. Title 16, California Code of Regulations, Section 2326.1(a) (1), states that the applicant for a new certificate of authority, in addition to the requirements of Section 2326, will designate the managing officer. There shall be submitted with the application the written statement of such officer demonstrating that he has two years' experience in the cemetery business, or equivalent experience, which experience shall be commensurate with the size, type, and scope of the proposed activities of the cemetery authority.

According to the Bureau's report to the Joint Committee, during FY 1999/00, the Bureau had 158 candidates for the crematory manager examination with 46 no shows. During FY 2000/01, the Bureau had 104 candidates for the crematory manager examination with 34 no shows.

According to the Bureau's report to the Joint Committee, during FY 1999/00, the Bureau had 71 candidates for the cemetery manager examination with 26 no shows. During FY 2000/01, the Bureau had 57 candidates for the cemetery manager examination with 24 no shows.

According to the Bureau's report to the Joint Committee, in order to administer these examinations, revenues must be redirected from other Cemetery Fund resources. Redirecting resources from licensing or enforcement operations can result in delays in processing licensing applications, diminished enforcement operations and weakened consumer protection. Furthermore, it is significant to note that nearly one third of those candidates scheduled for these two examinations do not show up. This intensifies the loss to the Bureau because scheduling and examination preparation must still be completed for candidates who do not appear to take the examination. SB 723 (Figueroa), currently before the Legislature, would provide fee authority for the actual cost to the Bureau to develop, purchase, grade and administer the examinations.

No certificate or license is issued upon successfully passing the cemetery manager or crematory manager examination.

According to the Bureau's report to the Joint Committee, the Bureau is currently working with the Office of Examination Resources (OER) to evaluate moving the Bureau's examinations to a computer-based format. Under this format, the Bureau would qualify applicants to sit for the examination, which applicants could take at any of a number of test sites throughout the state. Since the Bureau's crematory manager and cemetery manager examinations have no fee authority, the Bureau would be unable to offer those examinations in a computer-based format.

ISSUE #7: Only applicants for the funeral director and embalmer examinations are required to submit fingerprint cards for background investigations. It is unclear why the Bureau doesn't interpret the law to require all Bureau applicants to submit fingerprint cards for background investigations.

Question #7 for the Bureau: *How does the Bureau interpret the law relative to the submission of fingerprint cards for background investigations?*

Background: Section 144(a) of the Business and Professions Code provides that notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation. Section 144(b) of the Business and Professions Code provides that Section 144(a) applies to the Cemetery and Funeral Programs.

In 2000, the Department sponsored legislation (AB 2888) that recast the Cemetery Program and Funeral Program into the Cemetery and Funeral Bureau. This measure modified numerous sections of the Business and Professions Code but did not "update" Section 144.

ISSUE #8: Applicants for a Certificate of Authority for the operation of a cemetery must post a \$50,000 fidelity bond with the Bureau. Neither crematories nor funeral establishments have a similar requirement.

Question #8 for the Bureau: *Can the Bureau explain the purpose of the fidelity bond requirement? Should the bond requirement be retained? Should the bond amount be increased? Should the bond requirement be extended to funeral establishments and crematories?*

Background: Section 8734 of the Health and Safety Code generally provides that applicants for a Certificate of Authority for operation of a cemetery, must provide the Bureau with evidence that a \$50,000 fidelity bond on officers and employees has been posted. The purpose of the bond is to guarantee payment of any monetary loss incurred by the endowment care or special care funds of the cemetery authority, occasioned by any acts of fraud or dishonesty by the board of trustees or corporate trustee thereof. An endowment care fund includes money collected from cemetery property purchasers and placed in trust for the maintenance and upkeep of the cemetery.

EXAMINATION ISSUES

ISSUE #9: It is unclear whether the Bureau is complying with the recommended five to seven year timeframe for performing an occupational analysis and examination validation for their cemetery examinations.

Question #9 for the Bureau: *Is the Bureau complying with the recommended five to seven year timeframe? When is the last time the Bureau performed an occupational analysis of their cemetery broker examination, cemetery manager examination and crematory examination?*

Background: According to the Bureau's report to the Joint Committee, the Department's Office of Examination Resources (OER) has developed new examinations annually since 1997. Meetings with subject matter experts were held in 1997 to develop test plans for these programs shortly after DCA assumed responsibility for the exams from the former Cemetery Board and Board of Funeral Directors and Embalmers. With a few minor changes, the test plans are still in use. Only the embalmer examination tests detailed knowledge of a trade as well as knowledge of related laws and regulations. The other examinations test knowledge of laws and regulations.

The Funeral Fund BCP in FY 2000/01, provided funding for the Bureau to conduct an occupational analysis of embalming and funeral directing over a two-year period, and for ongoing examination resources. The Bureau has contracted with OER to conduct both studies. The occupational analysis of the practice of embalming in California was begun by OER in FY 2000/01; and the occupational analysis of the funeral director practice is being conducted in the current fiscal year (FY 2001/02). The OER cost to the Bureau is \$56,000 for each occupational analysis.

While the Bureau's report specifically addresses the embalmer examination and the funeral director examination, there is no specific mention of the examinations for the cemetery licensees.

ISSUE #10: It is unclear whether the funeral director's examination includes questions about trusts, fiduciary duties, contracts or investments.

Question #10 for the Bureau: *Does the funeral director's examination include questions about trusts, fiduciary duties, contracts or investments? Does the Bureau feel that this examination adequately checks the competency of the applicant?*

Background: Section 7685 of the Business and Professions Code provides that before an individual is granted a funeral director's license, he or she shall successfully pass an examination upon the following subjects: (a) the signs of death; (b) the manner by which death may be determined; (c) the laws governing the preparation, burial and disposal of human remains, and the shipment of bodies dying from infectious or contagious diseases; and (d) local health and sanitary ordinances and regulations relating to funeral directing and embalming.

In comparison, Section 9702.5 of the Business and Professions Code generally provides that the Bureau shall ascertain by written examination that the applicant for a cemetery broker's license has a fair understanding of: (1) cemetery associations, cemetery corporations and duties of directors; (2) plot ownership, deeds, certificates of ownership, contracts of sale, liens and leases; (3) establishing, dedicating, maintaining, managing, operating, improving and conducting a cemetery; (4) the care, preservation and embellishment of cemetery property; (5) the care and preservation of endowment care funds, trust funds, and the investment thereof; and (6) the obligations between principal and agent, of the principles of cemetery brokerage practice and the business ethics pertaining thereto, as well as of the provisions of this act relating to cemetery brokerage.

PROFESSIONAL CONDUCT ISSUE

ISSUE #11: The top two categories of complaints received by the Bureau are allegations of contractual violations and unprofessional conduct. Complaints concerning contracts involve both preneed and at-need funeral or cemetery services, and most often involve violations of trust fund requirements for preplanned arrangements.

Question #11 for the Bureau: *Does the Bureau have any suggestions about how to curb these types of complaints in the future? Does the Bureau feel that the existing fine structure acts as a sufficient deterrent?*

Background: According to the Bureau's report to the Joint Committee, the largest number of complaints involves allegations of contractual violations, followed by allegations of unprofessional conduct. Complaints concerning contracts involve both preneed and at-need funeral or cemetery services, and most often involve violations of trust fund requirements for pre-planned arrangements. Common complaints are that the decedent told their family members that all costs for the funeral and burial had been paid, and additional costs are incurred at time of death that were not included in the contract. Additional allegations involve consumers being charged more than provided for in the contract.

ENFORCEMENT ISSUES

ISSUE #12: Consumers purchase insurance policies in conjunction with preneed contracts. It is unclear whether insurance agents are improperly engaging in unlicensed funeral activities or whether they are subject to and comply with the preneed disclosure and trusting laws.

Question #12 for the Bureau: *Does the Bureau think insurance agents are subject to the preneed disclosure and trusting laws? If the Bureau thinks insurance agents are subject to the preneed disclosure and trusting laws, how do they ensure compliance? Would it be effective for the Bureau to work with the Department of Insurance to ensure that funeral employees are not*

selling insurance policies without a license and that insurance agents are not selling funeral products without a license?

Background: The Bureau regulates nearly every aspect of the licensed cemetery and funeral industries. The Bureau has responsibility for overseeing both the fiduciary and the operational activities of the industries. On the financial side, the Bureau oversees funeral preneed trust funds, cemetery endowment care trust funds and special care trust funds.

The State Department of Insurance regulates the sale of insurance policies, which are at times used to fund preneed funeral contracts. According to the Bureau's report to the Joint Committee, the seller must meet the price disclosure and contract requirements under the Bureau's jurisdiction. However, it is unclear whether the Bureau ensures that the sellers of these products comply with the price disclosure and contract requirements.

ISSUE #13: The law requires the Bureau to annually inspect the operations of 5 to 10 percent of the registered cremated remains disposers. It is unclear whether the Bureau complies with this requirement.

Question #13 for the Bureau: *Does the Bureau conduct random inspections of their registered cremated remains disposers? If so, what is the extent and frequency?*

Background: Section 9745.5(b) of the Business and Professions Code generally provides that the Bureau shall conduct, on an annual basis, random inspections of the operations of 5 to 10 percent of the registered cremated remains disposers, and is authorized to inspect any place used by a cremated remains disposer for the storage of cremated remains without notice to the cremated remains disposer. The Bureau's report to the Joint Committee indicates that there are currently 218 registered cremated remains disposers.

It is unclear, from either the Bureau's report to the Joint Committee or the Bureau's website, whether the Bureau utilizes its audit authority.

ISSUE #14: The Bureau has the authority to assess a late fee on every licensee except cemeteries and crematories.

Question #14 for the Bureau: *Does the Bureau feel that licensees purposefully fail to renew because it is a cheaper alternative? What problems does the failure of timely renewal cause for the Bureau?*

Background: Section 9747 of the Business and Professions Code provides that licenses under the Cemetery Act are subject to the renewal fee plus a delinquent fee of 50% (the total delinquent renewal fee would be 150% of the normal renewal fee). However, the law places a cap of \$25 on the delinquent fee. The delinquent fee cap is inconsistent with the licenses under the Funeral Act and with other regulatory programs under the Department that have authority to charge 150% of the renewal fee.

ISSUE #15: Some members of the cemetery and funeral industry have expressed concerns about what they perceive as inconsistent interpretations by the Bureau's field representatives.

Question #15 for the Bureau: *Does the Bureau have a training program for their field representatives? Does the Bureau have a standard protocol field representatives follow when they inspect an establishment or respond to a complaint?*

ISSUE #16: The Joint Committee has been informed of the practice of convalescent homes and hospitals providing the family of the deceased with information on a local funeral establishment or automatically transporting the deceased to a local funeral establishment.

Question #16 for the Bureau: *Is the Bureau familiar with this practice? Is this type of practice prohibited? If no, should it be prohibited? Should it only be prohibited if the hospital or convalescent home receives some form of kickback?*

UNLICENSED SEGMENTS OF THE INDUSTRY ISSUES

ISSUE #17: The relationship between the licensed and unlicensed segments of the funeral and cemetery industry has been a long and contentious one.

Question #17 for the Bureau: *Is the Bureau aware of whether there is a problem with funeral establishments purposefully damaging caskets they receive for their customers from third party retailers? Is the Bureau aware of whether funeral establishments or cemeteries are discriminating against consumers because they purchased a casket, vault or marker from a third party retailer? Is the Bureau aware of whether defamatory comments about the quality of the products provided by third party retailers are being made? Should funeral establishments be required to sign delivery tickets when a casket is delivered by a third party retailer? Is the Bureau aware of whether funeral establishments are requiring consumers to be present at the establishment when their casket is delivered from a third party retailer? Is the Bureau aware of whether funeral establishments are refusing to transport a consumers' casket when purchased from a third party retailer? Should funeral establishments be required to provide a clear disclosure to consumers specifying that there is no penalty/fee assessed to them if they purchase items (caskets, flowers, etc.) from an outside source (handling fee)? Should cemeteries be required to provide a clear disclosure to consumers specifying that there is no penalty/fee assessed to them if they purchase items (markers, monuments, etc.) from an outside source (handling fee)? What does the Bureau do to prevent and punish unlicensed behavior and the unprofessional conduct of licensees?*

ISSUE #18: Retail casket stores, and occasionally others, currently sell merchandise that, if sold by a licensed funeral director, would be subject to preneed sales requirements relating to certain contract, fiduciary and reporting practices.

Question #18 for the Bureau: *Does the Bureau have any jurisdiction over casket retailers? Does the Bureau believe that casket retailers should be subject to trust requirements for preneed burial container arrangements?*

Background: In recent years, more attention has been focused on retail casket sales by industry associations, and by corporate and independent owners of funeral establishments and cemeteries. The California Funeral Directors Association (CFDA) sponsored legislation in 1997 to place contract, disclosure and trust fund requirements on casket retailers (SB 816). SB 816 was an effort to "level the playing field" between "discount" casket sellers and traditional funeral home caskets sellers. The bill also was intended to protect consumers by applying existing consumer protection provisions to all casket sales. Governor Wilson ultimately vetoed SB 816.

In 1998, the Legislature enacted AB 1709 (Alquist, Chapter 286, Statutes of 1998) which placed contract and disclosure requirements upon third party sellers in the general advertising provisions of the Business and Professions Code. In 1999, legislation was sponsored by the CFDA (AB 1462) to require casket retailers who sell goods on a preneed basis to place the money into trust until time of need. The purpose of AB 1462, was to enact business practice standards regarding preneed contracts for non-regulated third-party sellers of funeral related products that are analogous to the standards that apply to regulated funeral business entities and persons. That bill eventually died.

EXEMPTION FROM LICENSURE AND PRACTICE REQUIREMENTS ISSUES

ISSUE #19: The law exempts an individual functioning as a cemetery broker, cemetery manager or cemetery salesperson from licensure and regulation by the Bureau when he/she is an employee (direct or proprietary) of a religious corporation, church, religious society or denomination.

Question #19 for the Bureau: *Does the Bureau know of any reason why this exemption should be retained? Should the law be amended to eliminate this exemption or differentiate between direct employees of the religious corporation, church, religious society or denomination and proprietary employees?*

Background: The Cemetery Act (Business and Professions Code Sections 9600-9789) covers the licensing and regulation of cemeteries, cemetery brokers, cemetery managers, cemetery salespersons, cremated remains disposers, crematories and crematory managers. A religious corporation, church, religious society or denomination, a corporation sole administering temporalities of any church or religious society or denomination, or any cemetery organized, controlled, and operated by any of them is specifically excluded from this Act (Section 9609 of the Business and Professions Code).

The justification for this exemption is unclear.

ISSUE #20: Cemeteries, crematories, cemetery brokers, cemetery salespersons, and funeral directors are specifically exempt from the laws governing cremated remains disposers. The justification for this exemption is unclear.

Question #20 for the Bureau: *Is the Bureau aware of any reason to exempt these licensees from the registration and practice requirements?*

Background: Section 9740 of the Business and Professions Code provides that no person shall dispose of, or offer to dispose of, any cremated human remains unless registered as a cremated remains disposer by the Bureau. Any person, partnership or corporation holding a certificate of authority as a cemetery, crematory license, cemetery broker's license, cemetery salesperson's license or funeral director's license is exempt from the provisions regulating cremated remains disposers.

What follows are some of the provisions that registered cremated remains disposers are subject to:

- Section 9741(b) of the Business and Professions Code provides that every registered cremated remains disposer who dispenses human remains by air shall post a copy of his or her current pilot's license, and the address of the cremated remains storage area at his or her place of business. Every registered cremated remains disposer who dispenses human

remains by boat shall post a copy of his or her current boating license and the address of the cremated remains storage area at his or her place of business.

- Section 9742 of the Business and Professions Code provides that all aircraft used for the scattering of cremated human remains shall be validly certified by the Federal Aviation Administration. All boats or vessels used for the scattering of cremated human remains shall be registered with the Department of Motor Vehicles or documented by a federal agency, as appropriate. The certification or registration shall be available for inspection by the Bureau.
- Section 9743 of the Business and Professions Code provides, that a cremated remains disposer who scatters any cremated human remains, without specific written instructions from the person having the right to control the disposition of the remains, or who scatters any remains in a manner not in accordance with those instruction, shall be subject to disciplinary action.
- Section 9744 of the Business and Professions Code provides that each cremated remains disposer shall provide the person with the right to control the disposition of the remains, under Section 7100 of the Health and Safety Code, with a copy of the completed permit for disposition of human remains pursuant to Chapter 8 (commencing with Section 103050) of Part 1 of Division 102 of the Health and Safety Code within 30 days of the date of the scattering.
- Section 9745 of the Business and Professions Code generally requires cremated remains disposers to file, and thereafter maintain an updated copy of, an annual report on a form prescribed by the Bureau. The report shall include, but not be limited to, the names of the deceased persons whose cremated remains were disposed of, the dates of receipt of the cremated remains, the names and addresses of the persons who authorized disposal of those remains, the dates and locations of disposal of those remains, and the means and manner of disposition.

It is unclear why the registered cremated remains disposers are the only Bureau licensees subject to these consumer protection provisions.

CONSUMER AND LICENSEE OUTREACH ISSUE

ISSUE #21: Funeral establishments and cemeteries are currently required to make the Bureau's consumer guide available to consumers. Effective January 1, 2002, funeral establishments will be required to provide the guide to consumers in certain specified situations.

Question #21 for the Bureau: *Does the Bureau feel the Cemetery Act provision should be amended to mirror the provision in the Funeral and Embalmer's Act?*

Background: Sections 7685.5 and 9663 of the Business and Professions Code currently require the Bureau to make available to funeral establishments and cemetery authorities a copy of a consumer guide for funeral and cemetery purchases for purposes of reproduction and distribution. Funeral establishments and cemetery authorities are required to prominently display and make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of the consumer guide for funeral and cemetery purchases. Effective January 1, 2002, Section 7685.5 of the Business and Professions Committee will require, prior to the drafting of a contract for funeral services, the funeral establishment to provide, for retention, the consumer with a copy of the consumer guide for funeral and cemetery purchases.

BUREAU, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUE

ISSUE #22: Is the Bureau utilizing Internet capabilities to improve services and provide better information to consumers and licensees?

Question #22 for the Bureau: *What has the Bureau done to enhance its Internet capabilities? What other improvements does the Bureau expect to make?*

3.

BOARD'S RESPONSE TO ISSUES AND RECOMMENDATIONS FROM PREVIOUS REVIEW

ISSUE # 1. Enforcement activities of the Cemetery Program and the Cemetery Task Force within the Department's Division of Investigation

Background

In 1995, the discovery in Southern California of what appeared to be serious crimes committed at various cemeteries under the State's jurisdiction propelled the already struggling Cemetery Board into crisis. The alleged crimes, which included fraud, embezzlement of endowment care trust funds, mishandling human remains and recycling gravesites, brought crisis to the state's cemetery industry, overwhelming the Cemetery Board. Urgency legislation transferred the regulatory operations of both Boards to the Department of Consumer Affairs (Department) as of January 1, 1996.¹⁸

In the fall of 1995 the Director of the Department testified at the Joint Committee hearings regarding the Department's preliminary assessment of the state of the regulatory activities of the Cemetery Board. In 1997, the Department further made a report to the Legislature titled *Cemetery and Funeral Programs, Report to the California Legislature, 1996 Calendar Year*.

As a result of the Department's assessment, in 1996, the Department created the Cemetery Program to carry out regulatory activities of the former Cemetery Board. The Department, with the Legislature's approval, further created the Cemetery Task Force (CTF) within the Division of Investigation (DOI), the Department's peace officer division. The CTF was created to address the alleged abuses and enforcement problems within the cemetery industry.

- To authorize the necessary funding to create the Task Force, the Legislature amended the Budget Act of 1995¹⁹ to provide both the spending authority and the necessary funds through loans to the Department to fund the Task Force in FY 1995/96.
- Spending authority for FY 1996/97 and an additional loan was authorized through the Budget Act of 1996.²⁰

¹⁸ AB 910, Speier, Chapter 381, Statutes of 1995, urgency effective August 4, 1995.

¹⁹ AB 597, Speier, Chapter 38 Statues of 1996.

- Fees to provide funding for the Department's ongoing enforcement efforts in the cemetery industry and to repay the loans were also enacted in that same year.²¹

Loans

Chapter 38 Statutes of 1996 approved loans of \$2,559,000 for the Cemetery Fund.

- \$705,000 was borrowed from the Tax Preparer Program (TPP)
- \$1,854,000 was borrowed from the Contractors State Licensing Board (CSLB)

The Tax Preparer Program was sunsetted in 1996, and the Cemetery Fund was established as the successor fund.²² On September 1, 1999, the loan from the Contractors State Licensing Board was fully paid off in accordance with the loan repayment schedule established by the Department of Finance.

Chapter 162 Statutes of 1996 approved a second loan of \$3,803,000 from the Contractors State Licensing Board. However, adjustments to the Cemetery Task Force reduced the spending demands by \$1,300,000 and resulted in only \$2,503,000 actually being borrowed. The Department is paying back this loan plus interest according to the schedule established by the Department of Finance. The second loan will be paid in full on April 1, 2003.

For the two fiscal years, the Legislature approved loans and spending authority totaling \$6.4 million to fund the CTF. However, Department adjustments reduced the amount actually borrowed to \$5.1 million.

Expenditures

From FY 1995/96 through FY 1996/97 the Department spent approximately \$5.3 million on Cemetery Program operations including funding for the CTF. In addition to the borrowed funds, the total expenditures include the Cemetery Board's original appropriation of \$211,000 for six months in FY 1995/96. The following chart indicates the disposition of those expenditures based upon a budgetary analysis by program function:

EXPENDITURES BY CEMETERY PROGRAM AND CEMETERY TASK FORCE		
FUNCTION	FY 1995/96	FY 1996/97
Cemetery Board	\$ 211,000	\$ —

²⁰ SB 1393, Thompson, Chapter 162, Statutes of 1996.

²¹ AB 2234. Willard Murray, Chapter 964, Statutes of 1996.

²² Section 55, of AB 1077, Greene, Chapter 1137, Statutes of 1996, provides: "Notwithstanding any other provision of law, all assets remaining in the special fund of the Tax Preparers Program on the effective date of the repeal pursuant to Section 21 of this act shall be transferred to the Cemetery Fund as successor fund pursuant to Section 16346 of the Government Code."

Education	\$ 53,864	\$ 66,804
Licensing	\$ 99,637	\$ 366,836
Examinations	\$ 99,850	\$ –
Intake	\$ 5,535	\$ 22,268
Mediation	\$ 193,313	\$ 255,203
Enforcement	\$ 1,676,800	\$ 2,218,303
Miscellaneous	\$ –	\$ 586
Total Expenditures	\$ 2,340,000	\$ 2,930,000

Operations

Prior to January 1, 1996, the Department commenced a comprehensive review of the cemetery regulatory program, evaluating the status of all licenses, enforcement actions, funding levels, staffing needs, and other functions performed by the Cemetery Board. In the course of that evaluation, the Department determined that it would fully integrate the cemetery operations into the Performance Based Budgeting (PBB) pilot project. This pilot project was begun in 1993 with other Bureaus and Programs under the Department's direct authority. Under PBB, the Department was given the latitude to manage resources based on fluctuating program demands. The Department reorganized and centralized the core business functions previously performed by individual Bureaus into licensing, intake, mediation, and enforcement functions (LIME functions).

Results

- More than 8,700 licenses issued or renewed,
- Over 10,103 phone inquiries answered,
- 424 complaints mediated,
- Almost \$1 million of trust fund dollars restored as a result of the nearly 200 trust report examinations conducted annually,
- 193 cemetery property profiles developed,
- Each licensed crematory inspected annually as required by law,
- \$4,355,582 of trust fund dollars restored as a result of 15 investigative audits,
- \$4,575,075 of restitution awarded as a result of 11 investigations,
- \$10,409,267 of funds in 10 trusts moved under the conservatorship of the Department. The number of funds currently under conservatorship is 3.

Civil and Criminal Action

Since establishing the CT F, the Department of Consumer Affairs has been involved in a number of civil and criminal actions. The DOI operated as the lead agency investigating criminal activity at Hollywood Memorial Park Cemetery, Lincoln Memorial Park Cemetery and

Sunnyside Cemetery in Southern California. Due to the lengthy nature of investigations, prosecutions, and civil litigation, some of these cases which were begun under the CTF, extended beyond the period of Task Force funding (FY 1996/97).

In 1998, as a result of lengthy DOI investigation at Hollywood and Lincoln, the Los Angeles District Attorney brought criminal charges against the Chief Financial Officer (CFO) of Hollywood Cemetery Association which owned and operated both cemeteries. The CFO pleaded guilty to felony charges and was sentenced to one year in jail, five years probation and ordered to make \$520,000 in restitution to the trust funds. The cemetery association's president who appeared to have the most criminal liability died during the investigation.

In 1997 the California Attorney General (AG) brought civil action against the association president and, after his death, his estate. The Department's claim for \$564,075 against the estate was eventually granted. However, because of the estate's diminished value and the number of creditor claims, actual money recovered for the trust funds was minimal. In 1997, the AG also pursued civil action against members of the cemetery association's endowment care fund board of trustees. The cases were settled because personal bankruptcies and the difficulty of establishing liability eventually made it apparent that the recoverable costs of any civil judgment would be minimal. Total restitution to the cemetery trust funds was \$54,000. The court, through AG litigation, also ordered that \$203,000 of commingled trust funds be removed from one trust fund and paid into another appropriate cemetery trust fund.

At Sunnyside Cemetery in Long Beach, a lengthy DOI investigation led to the arrest and conviction of the cemetery owner. That owner ultimately admitted to embezzling more than \$500,000 in cemetery trust funds. On September 12, 1996, the owner was sentenced to four years in state prison and ordered to make \$400,000 restitution to the trust funds. The AG also obtained a \$500,000 civil judgment against the owner in favor of the trust funds. Through efforts of the Los Angeles District Attorney's Office, working with the DOI and the AG, a second individual associated with Sunnyside eventually plead guilty to five counts of grand theft and was sentenced in 1999 to three years in state prison and ordered to pay more than \$45,000 in restitution.

At Paradise Cemetery in Santa Fe Springs, the Los Angeles County Sheriff's Department headed the criminal investigation with the assistance of DOI. The cemetery operator plead no contest to 69 felonies and was sentenced to three years in prison and ordered to make \$200,000 in restitution to the trust funds. Two others associated with the cemetery also received criminal convictions and were ordered to make more than \$100,000 restitution to trust funds. Through Department efforts brought by the AG, an additional \$89,000 was recovered for the cemetery trust funds. The AG was also involved in negotiating approximately \$1.8 million for the cemetery trust funds as part of the settlement of consumer class action lawsuits against the cemetery owners.

The Department's involvement in the four cemeteries above has been a prolonged and costly ordeal. It was necessary for the AG to take legal action to establish the Department as conservator of the trust funds of all four cemeteries. The AG also took legal action to set up receiverships for the cemeteries. When new cemetery owners were brought in, it was necessary

for the AG to be involved in the court actions of approving new owners, terminating receiverships, and eventually terminating the conservatorships and turning the trust funds over to the new cemetery owners. The various bankruptcies, criminal, and civil actions additionally required heavy involvement by the AG on behalf of the Department.

ISSUE # 2. Cemetery Fund projected shortfall

Background

In 1996, AB 2234 (Willard Murray) raised the burial and cremation fees provided in BPC §§ 9765, 9786 from \$0.50 for each interment and \$1 for each cremation to \$8.50 for each interment or cremation. These fees are paid into the Cemetery Fund by licensed certificates of authority and crematories. The fees were raised in order provide increased funding for the mandated oversight of the cemetery industry by the Department and to generate revenue to fund the enhanced enforcement of the Cemetery Act in response to the industry crisis discovered in 1995.

As noted above, funds for the administration of these enforcement activities under the Cemetery Act were provided by loans and appropriated by the Budget Acts of 1995 and 1996.

In addition, the Cemetery Fund Budget Change Proposals (BCP) in 1997 (which provided limited term funding) and 1999 (which provided permanent positions and funding) were based in part upon the revenues generated from the increased fee.

- The 1997 BCP provided funding for FY 1997/98 and FY 1998/99, and limited term positions for Cemetery Program operations. The BCP provided a total Cemetery Program appropriation of \$1 million for FY 1997/98.
- A 1999 BCP provided permanent funding and positions for Cemetery Program operations. The BCP authorized an annual spending authority of \$1.3 million for continued cemetery operations.

Under the current law, the authority for these fees sunsets when the loans are repaid, but not later than April 1, 2003. As the law is currently drafted, the \$8.50 fee does not revert to \$0.50 and \$1, respectively, but would be completely eliminated.

The Fund Condition Analysis of the Cemetery Fund (see Part 1), shows the revenue loss will cause a reserve shortfall of 5.8 months in FY 2003/04 – which means the Bureau will cease cemetery operations less than five months into the fiscal year. In FY 2004/05, the reserve will sink to a 13.4 month shortfall – which means cemetery operations cease completely.

The shortfalls in the Cemetery Fund will require the Bureau to drastically cut all regulatory operations and eliminate many key functions, including enforcement and licensing activities.

The cuts will create tremendous consumer complaint backlogs, and eliminate essential consumer protection operations.

Recommendation

The Bureau recommends that legislation be enacted which would remove the sunset date from the \$8.50 fee to permanently establish a \$8.50 maximum fee (BPC §§ 9765, 9786). In this way, the current enforcement, inspection, and licensing operational levels can be maintained into the future and provide for any necessary growth.

ISSUE # 3. Converting limited term staff to permanent

Background

In FY 2000/01, the Funeral Bureau obtained a Budget Change Proposal (BCP) to fund two licensing technicians and two field staff for enforcement operations, on a two-year, limited-term basis. The BCP provided \$368,000 in FY 2000/01 and \$329,000 in FY 2001/02. These amounts included a \$49,000 ongoing authorization for examination development.

When the Legislature transferred Funeral Board regulatory activities to the Department in 1996, only two field enforcement positions, and one licensing position were funded. That staffing level was inadequate to effectively and efficiently meet regulatory mandates and goals. At that time, considerable backlogs existed in all areas of the regulatory program.

Due to budgetary limitations, the extensive backlogs continued under the Department. Licensing backlogs increased since there was only clerical position for licensing operations. Limited enforcement resources meant funeral establishments were inspected, at best, once every four years. This low level of oversight did not adequately protect consumers.

Beginning in 1997, AB 2877 made significant changes to funeral regulation. Specifically, the legislation:

- Licensed individual funeral directors (new license category)
- Required each funeral establishment to employ a licensed funeral director as manager.
- Required any employee or agent of a funeral establishment who consults with the family of a deceased person to arrange funeral services must receive documented training (oversight and monitoring of a new mandate).
- Revised educational requirements for embalmers and funeral directors
- Authorized funeral establishments to apply to share preparation rooms, body storage facilities, a managing funeral director, and apprentice embalmers.

Each of these new provisions increased licensing, application, inspection and enforcement workloads with no increase in budgetary authority or staffing levels.

To address the additional and existing workload and to more proactively address enforcement issues, the Bureau sought and obtained a BCP that provided additional staff and funding on a two-year limited term basis for FY 2000/01 and FY 2001/02. The Bureau believes that the enhanced consumer protection from the licensing and enforcement positions is continuous and ongoing, and therefore three of the four limited term positions should be converted to permanent positions.

Recommendation

The Bureau recommends that three of the limited-term positions and funding be made permanent.

ISSUE # 4. Fund reserve limitation

Background

Revenues from licensing and other regulatory fees fund Bureau operations. Although rare, it is possible, under certain circumstances, for fund reserves to grow to an excessive amount. As demonstrated in the Fund Condition Analysis in Part 1, Funeral Fund revenues grew to a 24.6-month reserve at the end of FY 1999/00. The Funeral Fund BCP in FY 2000/01 began to steadily reduce the reserve to a more prudent level.

The Fund Condition Analyses for both the Funeral Fund and Cemetery Fund do not project an excessive accumulation of revenue. However, it is appropriate to establish suitable safeguards against future accumulations of large reserves in the funds.

There is no current statutorily mandated maximum reserve level for either fund the Bureau administers. It seems appropriate, then, to establish a reserve limit similar to the statutory limit for the Private Investigator Fund in BPC § 7572.

Recommendation

The Bureau recommends that both the Cemetery and Funeral Acts be amended to provide:

If, at the end of any fiscal year, the fund reserve collected from licensing revenues and not expended, is an amount which equals or is more than the money necessary for the projected regulatory activities for the next two fiscal years, the bureau shall

reduce license or other fees during the following fiscal year in an amount which will reduce any fund reserve to an amount less than the projected regulatory activities for the next two fiscal years.

ISSUE # 5. Clarification of the Bureau's authority to inspect cemeteries

Background

The discovery in recent years of mismanagement and violations of the law at cemeteries operated under licenses issued by the Bureau emphasizes a need for ongoing inspections of cemeteries. Current law provides general authority for the Bureau to inspect the operations of licensed cemeteries. However, the law does not explicitly authorize the Bureau to have full access to cemetery operations to conduct physical inspections. The law also does not contain any requirement for the Bureau to conduct periodic inspections of cemeteries.

Current law requires the Bureau to examine books and records relating to cemetery trust funds and reports. It also requires the Bureau to inspect books, records, and premises of each licensed crematory. However, the law does not provide the same clear inspection authority for cemeteries.

Recommendation

The Bureau recommends the enactment of legislation to establish clear authority for the Bureau to inspect cemeteries.

ISSUE # 6. Annual cemetery inspections

Background

As stated in Issue #6 above, recent discoveries by Bureau field representatives of serious violations in licensed cemeteries emphasizes the necessity to inspect cemeteries on an ongoing basis. Currently, there is no mandate for the Bureau to inspect cemeteries, and the Bureau does not have resources to conduct elective inspections on a consistent basis.

Finding problems before they develop into major consumer issues provides proactive consumer protection, and enables the Bureau to better regulate the industry. If cemetery owners and operators know that they will be inspected each year, they will be more likely to keep their operations within the requirements of the law.

Recommendation

The Bureau recommends annual unannounced inspections of each licensed cemetery.

ISSUE # 7. Fee authority for Cemetery Manager and Crematory Manager Examinations

Background

As stated in Part 1 of the Report, the law requires that each crematory must be operated under the supervision of a crematory manager who has passed the Bureau's crematory manager examination. The law (Bureau regulation) also provides that when a new cemetery license is obtained, the applicant must appoint a cemetery manager who has passed the Bureau's cemetery manager examination to supervise the cemetery operations.

Current law does not contain a fee for the Bureau's cemetery manager or crematory manager examinations. In order to administer and develop these examinations, revenues must be redirected from other Cemetery Fund resources. Redirecting resources from licensing or enforcement operations results in delays in processing licensing applications, diminished enforcement operations and weakened consumer protection.

Furthermore, nearly one-third of the candidates scheduled for these two examinations do not show up for the examination. This intensifies the loss to the Bureau because scheduling, and examination preparation must be completed for these candidates who, ultimately, do not show up to take the examination. In addition, it is not unusual for the "no shows" to apply to sit for a subsequent examination – essentially doubling the Bureau's cost for that individual to take the examination.

Recommendation

The Bureau recommends the enactment of legislation to establish fees for the cemetery manager examination and crematory manager examination.

ISSUE # 8. Cemetery manager

Background

The law provides that the applicant for a certificate of authority (cemetery license) must document that the cemetery authority owns or is actively operating a cemetery in this state or that the applicant is ready to begin operating a cemetery in this state. Bureau regulations require that applicants for a new license to operate a cemetery must appoint a manager qualified by the Bureau. But the regulation exempts existing cemeteries from the qualified manager requirement (grandfather provision).

Recommendation

The Bureau recommends the enactment of legislation to require each licensed cemetery to designate a qualified cemetery manager to supervise the cemetery operations.

ISSUE # 9. Delinquent renewal fees

Background

Current law provides that licenses under the Cemetery Act are subject to the renewal fee plus a delinquent fee of 50% (the total delinquent renewal fee would be 150% of the normal renewal fee). However, the law places a cap of \$25 on the delinquent fee. The delinquent fee cap is inconsistent with the licenses under the Funeral Act and with other regulatory programs under the Department that have authority to charge 150% of the renewal fee.

In addition, cemetery authorities and crematories have no incentive to renew their licenses on time, which creates enforcement problems as well as increasing the potential for consumer harm.

Recommendation

The Bureau recommends the enactment of legislation to provide for a delinquent renewal fee of 150% of the timely renewal fee for licenses under the Cemetery Act.

ISSUE # 10. Public meetings

Background

The fundamental purpose of the Bureau's regulatory operations is to promote and protect the interests of consumers. Consumer outreach and education plays an important part in achieving the purpose of proactive consumer protection. As a part of that outreach and education efforts, it is important that a mechanism exists to elicit and enhance public input into Bureau activities and sharing ideas which educate both consumers and the regulated industries alike.

Since the Department resumed the responsibilities for the regulatory activities of the funeral and cemetery industries, the forums for sharing information and educating the public has been primarily through the Bureau's Consumer Outreach and Education Activities, as described in Part 1 of the Report.

The Bureau has actively used the Department's centralized Consumer Information Center (CIC) and the Communications and Education Division (CED) to get information, including its *Consumer Guide to Funeral and Cemetery Purchases*; to the public. The Bureau has also made presentations at numerous industry and consumer conferences and meetings. But for the most part, the Bureau has not held public forums to educate, inform and elicit input from the public.

In response to the clear need for public input and exchange of ideas, the Bureau has a plan to hold regular public forums for the purpose of educating, informing and seeking input from members of the public and its regulated industries.

4.

**FINAL RECOMMENDATIONS OF THE
JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE
AND THE DEPARTMENT OF CONSUMER AFFAIRS**

The Following Recommendations were Adopted by the Joint Legislative Sunset Review Committee on April 22, 2002 by a Vote of 6 to 0:

ISSUE #1. (CONTINUE TO REGULATE THE CEMETERY AND FUNERAL INDUSTRY?) Should the licensing and regulation of the cemetery and funeral professions be continued?

Recommendation #1: *The Joint Committee and the Department recommend the continued regulation of the cemetery and funeral professions.*

Comments: The potential for consumer and community harm in the delivery of cemetery and funeral services in a state with nearly 250,000 deaths a year (10 percent of all deaths in the country) is significant. Further, funeral and cemetery services constitute the third most costly purchase typically made by consumers. As recent high-profile cases in Compton, Riverside County, and the Bay Area indicate, abuse and fraud persist. Continued regulation of funeral establishments, cemeteries, crematories, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery salespersons, and cremated remains disposers is clearly necessary. We have recently seen in Georgia the consequences of inadequate regulation of these services.

ISSUE #2. (COORDINATE WITH THE DEPARTMENT OF INSURANCE ON ENFORCEMENT OF PRENEED FUNERAL CONTRACT PROTECTIONS?) Consumers purchase insurance policies in conjunction with preneed contracts. It is unclear whether insurance agents are improperly engaging in unlicensed funeral activities or whether they are subject to and comply with the preneed disclosure and trusting laws.

Recommendation #2: *The Joint Committee and the Department recommend that the Bureau should coordinate with the Department of Insurance on enforcement of preneed funeral contract protections.*

Comments: In the Department's ongoing effort to ensure that the Department has working relationships with other state agencies with responsibility for consumer transactions, the Department invited Insurance Commissioner Low and his staff to a meeting with the Department's Executive Officers and Chiefs in July 2001. A collaborative working relationship

between the Department and the Department of Insurance was established as a result of that meeting. The Department has directed the Cemetery and Funeral Bureau to meet and work with the Department of Insurance to coordinate maximum oversight of preneed funeral plans. Preneed funeral arrangements, which cover approximately 20 to 30 percent of all California funerals, can be subject to regulation by both the Bureau and the Department of Insurance, depending on whether the preneed arrangement is a pre-paid contract or an insurance policy.

The Bureau has principal jurisdiction over the sale of preneed contracts, while the Department of Insurance regulates the sale of insurance policies to fund preneed funeral services. The Bureau regulates the contract and price disclosures by the insurance salesperson as the funeral establishment's agent, but does not have regulatory authority over the insurance policy, or the insurance sale.

Each funeral establishment must be managed by a licensed funeral director who is responsible for ensuring full compliance with state law. Therefore, if a funeral establishment (or its employees or agents) is selling preneed insurance arrangements without an insurance license, both the funeral establishment and the funeral director may be held accountable by the Bureau.

During inspections of funeral establishments, the Bureau verifies whether the funeral establishment's employees or agents hold insurance licenses and confirms with the Department of Insurance that these licenses are in good standing.

The Department concurs with the Joint Committee's preliminary recommendation that the Bureau should actively seek to work cooperatively with the Department of Insurance to coordinate enforcement efforts against insurance fraud in preneed funeral insurance.

ISSUE #3. (SUBMIT A DECLARATION OF NON-REPORTING STATUS?) Should funeral establishments be required to submit a declaration of non-reporting status to the Bureau?

Recommendation #3: *The Joint Committee and the Department recommend that funeral establishments should be required to submit a declaration of non-reporting status to the Bureau on an annual basis.*

Comments: As a part of its oversight of preneed trust funds, the Bureau asks funeral establishments that do not report preneed trust funds to the Bureau to submit a *Declaration of Non-Reporting Status* which specifies what kinds of preneed arrangements its consumers may use. Types of non-reportable preneed arrangements include direct deposit into a savings account without the involvement of the funeral establishment and direct payment of preneed insurance premiums to an insurance company. In identifying insurance-based preneeds, the form asks for a list identifying all insurance companies with which its customers have preneed contracts. This form can be useful in monitoring insurance-based preneeds. However, the form is not required and is completed by funeral establishments only on a voluntary basis. To increase the Bureau's ability to maintain oversight of preneed funds, the Bureau should be given statutory authority to

require funeral establishments who do not currently file a preneed trust fund report be required to file a *Declaration of Non-Reporting Status* with the Bureau on an annual basis.

ISSUE #4. (CLOSELY MONITOR APPRENTICE PROGRAM?) It is unclear whether the entry-level requirements for embalmers are adequate, inadequate or duplicative.

Recommendation #4: The Joint Committee and the Department recommend that compliance with the embalmer apprentice requirements should be closely monitored.

Comments: The Bureau's enforcement staff recently identified cases of fraud among applicants for embalmer licenses during required apprenticeships. Apprentice embalmers are required to file reports with the Bureau, stating that they have complied with the requirements of the apprenticeship, including the requirement that they have assisted in embalming not less than 100 human remains (Business and Professions Code Section 7643). Through the Bureau's enforcement activities, the Bureau has received anonymous tips that apprentice embalmers have not complied with the apprenticeship requirements. Specifically, the Bureau has taken disciplinary action against apprentices who have fraudulently reported their completion of the requirement that apprentices must have assisted in embalming not fewer than 100 remains. Successful completion of the apprenticeship is an important component in the embalmer training and enforcement of this requirement is critical. The Department concurs with the Joint Committee's preliminary recommendation that the Bureau be vigorous in confirming licensure requirements have been met.

ISSUE #5. (AUTHORITY TO LICENSE AND REGULATE MANAGERS?) Although the Bureau administers an examination for crematory managers and cemetery managers the Bureau cannot license or regulate these individuals.

Recommendation #5: The Joint Committee and the Department recommend that cemetery managers and crematory managers should be subject to licensure and regulation by the Bureau.

Comments: While cemetery managers and crematory managers are required to pass an examination administered by the Bureau, these professionals are not licensed or regulated by the Bureau thereafter. Under current law, only the cemetery or crematory owners are held accountable for the operation of the cemetery or crematory. Licensing crematory and cemetery managers would provide another level of consumer protection by assigning accountability and state oversight to these professions and ensuring the Bureau's ability to enforce the law. Licensure would also provide an avenue for criminal background checks, ensuring that consumers are not at risk for criminal activity from licensees.

The Department concurs with the Joint Committee's preliminary recommendation that cemetery managers and crematory managers should be licensed by the Bureau. Additionally, this

provision is included in SB 17 (Figueroa), the Department-sponsored enhanced crematory regulation bill, which is currently pending in the Assembly.

ISSUE #6. (OCCUPATIONAL ANALYSES NEEDED?) It is unclear whether the Bureau is complying with the recommended five to seven year timeframe for performing an occupational analysis and examination validation for their cemetery examinations.

Recommendation #6: *The Joint Committee and the Department recommend that occupational analyses should be performed of the cemetery licensing examinations.*

Comments: Although the Bureau has contracted with the Department's Office of Examination Resources (OER) to conduct occupational analyses of the funeral examinations, the Bureau has not taken similar action for the cemetery examinations. The cemetery broker examination, cemetery manager examination and crematory examination have not been reviewed by OER within the past five to seven years, largely due to the cost associated with the occupational analyses. Because the Bureau does not have the authority to charge a fee for cemetery and crematory manager examinations, examination fees are not available to subsidize the costs of the occupational analyses.

However, the Bureau projects that revenues will be available for this should the \$8.50 fee be continued. The Department concurs with the Joint Committee's preliminary recommendation that the Bureau should take immediate steps to begin occupational analyses of the cemetery licensees.

ISSUE #7. (AUTHORIZE ASSESSMENT OF LATE FEES?) The Bureau has the authority to assess a late fee on every licensee except cemeteries and crematories.

Recommendation #7: *The Joint Committee and the Department recommend that the Bureau should be provided with the authority to assess a late fee on cemeteries and crematories.*

Comments: Currently, Section 9747 of the Business and Professions Code provides that licenses under the Cemetery Act are subject to the renewal fee plus a delinquent fee of 50%. However, the law places a cap of \$25 on the delinquent fee. This fee cap is inconsistent with the licenses under the Funeral Act and with other regulatory programs under the Department that have authority to charge 150% of the renewal fee. The Department concurs with the Joint Committee's preliminary recommendation that the Bureau should be given the authority to assess a late fee on cemeteries and crematories, as is the practice for their funeral licensees.

ISSUE #8. (AUTHORIZE ANNUAL INSPECTIONS OF CEMETERIES?) It is unclear whether the Bureau has explicit authority to conduct regular inspections of licensed cemeteries.

Recommendation #8: *The Joint Committee and the Department recommend that the Bureau should be given the authority to annually inspect cemeteries.*

Comments: Recent discoveries by Bureau field representatives of serious violations in licensed cemeteries emphasize the necessity to inspect cemeteries on an ongoing basis. Currently, there is no mandate for the Bureau to inspect the approximately 200 private cemeteries under the Bureau's jurisdiction. Equally important, the Bureau does not have the authority to conduct elective inspections on an annual basis.

The Department concurs with the Joint Committee's preliminary recommendation that the Bureau be given clear authority to inspect cemeteries, and be required to conduct annual unannounced inspections of each licensed cemetery. Additionally, this provision is included in SB 17 (Figueroa), the Department-sponsored enhanced crematory regulation bill that is currently pending in the Assembly. This authority would ensure consistent oversight of all funeral and cemetery operations, as the Bureau is already required to conduct annual inspections of funeral establishments and crematories. Identifying problems before major disruptions or crimes materialize provides community protection and incentives for businesses to conduct operations consistent with the law.

ISSUE #9. (REGULAR REVIEW OF ENDOWMENT CARE FUNDS?) **The Bureau is required to examine endowment care funds and endowment care reports. It is unclear whether the Bureau complies with this requirement.**

Recommendation #9: *The Joint Committee and the Department recommend that the Bureau should regularly review cemetery endowment care funds.*

Comments: The Bureau has conducted annual examinations of endowment care funds and special care fund reports each year since the Department assumed the regulatory responsibilities of the Boards in 1996. Desk audits of annual cemetery trust reports and licensing applications have resulted in over \$1.9 million being repaid to trust funds.

In addition, field audits of cemetery trust funds have identified more than \$4.2 million in trust fund violations. The Bureau has participated in financial investigations resulting in six criminal convictions for trust fund violations, and the California Board of Accountancy has taken disciplinary action against a certified public accountant for violations discovered by Bureau auditors.

The Bureau has not been able to fully comply with the requirement to examine each endowment care trust fund once every five years. Initial estimates of the workload associated with endowment care fund reviews were seriously flawed when the Bureau was established. The assumption was made that a trust fund audit, review, and sampling of records and receipts could be completed in a single day. In fact, this may take seven to eight weeks. The Department found that corporate structures in the cemetery industry increased the complexity of performing audits and thereby greatly extended the review process. Cemetery owners often have subsidiary or parent corporate entities, and tracing the path of funds is often complicated. As a result, a single

cemetery's trust fund audit may require investigative audits of several related corporate entities. The preparation of audit findings and the ongoing dialogue with the licensee regarding discrepancies, documentation, and business practices was also more complex than anticipated. It is not uncommon for audits to take seven to eight weeks.

In addition, recruitment and retention of audit staff has proved problematic, further hampering the Bureau's ability to complete regular audits. As is the case with certain state positions, competition with the private sector is difficult to overcome.

The Bureau has indicated a need for additional auditor positions in order to carry out the mandate to examine each endowment care fund once every five years. To the extent a need for additional resources to implement these activities is identified, we will address the need through the annual budget development process.

ISSUE #10. (REQUIRE FINGERPRINTS OF ALL APPLICANTS?) Only applicants for the funeral director and embalmer examinations are required to submit fingerprint cards for background investigations. It is unclear why the Bureau doesn't interpret the law to require all Bureau applicants to submit fingerprint cards for background investigations.

Recommendation #10: *The Joint Committee and the Department recommend that the Bureau should enforce the fingerprinting requirement for all applicants.*

Comments: Since 1998, Business and Professions Code Section 144 requires specified boards and bureaus within the Department, including the Cemetery and Funeral Bureau, to require submission of fingerprints for licensing applicants. The Bureau currently obtains fingerprints for all funeral operation license and registration categories. These include funeral directors, embalmers, apprentice embalmers, and funeral establishment owners.

As the JLSRC notes, the Bureau has not been able to fully implement this provision for cemetery licensees due to staffing and funding limitations. Nonetheless, the Bureau is currently finalizing forms, modifying its website information, and establishing the procedures to begin receiving fingerprints through the electronic digital imaging process of Live Scan in March 2002.

The Department concurs with the Joint Committee's preliminary recommendation that the Bureau collect fingerprints as a condition of licensure.

ISSUE #11. (CONTINUE \$8.50 FEE?) The main source of revenue (an \$8.50 cremation and interment fee) for the Bureau's Cemetery Fund will be eliminated as of April 1, 2003.

Recommendation #11: *The Joint Committee and the Department recommend that the \$8.50 cremation and interment fee, which constitutes 75% of the Cemetery Program's funding, should be continued.*

Comments: In 1996, the fee paid to the Bureau for each burial and cremation was raised from \$0.50 per interment and \$1.00 per cremation to \$8.50 each. These fees, which are paid by cemeteries and crematories, constitute 75 percent of the Cemetery Program's funding. The fees initially were increased, subject to sunset in April 2003. It is clear that these fees need to be continued at their current level in order to ensure support for cemetery and crematory regulation.

The approximately \$1.5 million generated annually by these fees has provided funding for continued cemetery operations and repayment of the Cemetery Task Force loans. Under current law, the authority for these fees sunsets when the loans are repaid or no later than April 1, 2003. Current law provides that the \$8.50 fee does not revert to \$0.50 and \$1, respectively, but is completely eliminated.

Without a reauthorization of the \$8.50 fee, the Bureau will have to cease cemetery operations half way into fiscal year 2003/04. In FY 2004/05, the Bureau will not be able to conduct any cemetery regulation at all. These shortfalls would require the Bureau to drastically cut all regulatory operations and eliminate many key functions, including enforcement, inspections, and licensing activities. Such program reductions would create tremendous consumer complaint backlogs, and eliminate essential consumer protection operations.

The continuation of the \$8.50 fee would allow the Bureau to address its enforcement challenges and proactively inspect crematories and cemeteries, respond to consumer complaints, examine trust funds and trust fund reports, take administrative action against violations, administer examinations, issue licenses, and conduct outreach to consumers and licensees.

Continuation of the \$8.50 fee would fund the additional costs of annual cemetery inspections and regular endowment care fund audits as recommended above.

The Department concurs with the Joint Committee's preliminary recommendation that the \$8.50 fee should continue. The sunset on the fee should be extended so that the Bureau can meet its consumer protection mandates.

ISSUE #12. (EXAMINE NEED FOR REGULATION OF PROPRIETARY EMPLOYEES?) The law exempts an individual functioning as a cemetery broker, cemetery manager or cemetery salesperson from licensure and regulation by the Bureau when he/she is an employee (direct or proprietary) of a religious corporation, church, religious society or denomination.

Recommendation #12: *The Joint Committee and the Department recommend that the Bureau should conduct a study accessing the need for regulation of proprietary employees of religious corporations, churches, religious societies or denominations.*

Comments: Although religious corporations, churches, religious societies, denominations or corporations are specifically excluded from the Cemetery Act, the Department recommends that the Bureau examine the need for regulation of proprietary employees of these entities. Currently,

the Bureau does not have oversight over cemetery brokers, cemetery managers, cemetery salespersons, cremated remains disposers, crematories and crematory managers who work for these entities. To ensure that this exemption is still appropriate given changes in the marketplace, the Department recommends the Bureau conduct an assessment of the need for regulation and report back to the Joint Committee and the Department in two years.

ISSUE #13: (REQUIRE CONSUMER GUIDE TO BE PROVIDED TO CEMETERY AND CREMATORY CONSUMERS?) Currently, funeral establishments are required to provide the consumer guide to consumers in certain specified situations; however, cemetery purchases are not subject to the same requirement.

Recommendation #13: *The Joint Committee and the Department recommend that the Bureau's consumer guide should be provided to consumers prior to contracting for cemetery services.*

Comments: Effective January 1, 2002, the Business and Professions Code requires, prior to the drafting of a contract for funeral services, that the funeral establishment will provide the consumer with a copy of the Bureau's consumer guide for cemetery and funeral purchases. The Department concurs with the Joint Committee's preliminary recommendation that this provision should be included in the Cemetery Act as well, and required when consumers are making cemetery purchases.

ISSUE #14. (STUDY NEED FOR REGULATION OF THIRD PARTY CASKET RETAILERS?) Retail casket stores, and occasionally others, currently sell merchandise that, if sold by a licensed funeral director, would be subject to preneed sales requirements relating to certain contract, fiduciary and reporting practices.

Recommendation #14: *The Joint Committee and the Department recommend that the Bureau should complete a study to determine the need for regulation of third-party casket sellers.*

Comments: Third-party sales of caskets and other funeral merchandise has been an emerging industry since the Federal Trade Commission (FTC) revised its Funeral Rule, effective July 1994. The Funeral Rule, which establishes federal standards for funeral industry practices, requires funeral establishments to give consumers accurate, itemized price information and disclosures. In addition, funeral establishments are prohibited from: (1) requiring customers to buy certain funeral goods or services as a condition for furnishing other funeral goods or services, and (2) charging consumers a handling fee for caskets purchased from another source.

In recent years, the role and function of the funeral establishment in California has changed significantly. Formerly, funeral goods and services were provided, almost exclusively, through the funeral establishment. Currently, funeral goods and some services may come from a variety of providers, such as cemeteries, casket stores, or crematories in addition to the funeral

establishment; and the funeral establishment may at times function as the coordinator of those providers.

In 1998, the Legislature enacted AB 1709 (Alquist, Chapter 286, Statutes of 1998), which placed contract and disclosure requirements upon third-party sellers in the general advertising provisions of the Business and Professions Code (BPC § 17530.7). However, the Legislature has not placed any trusting requirements on third-party sellers who take money for funeral goods in advance of need.

Issues regarding whether money taken in advance of need (preneed) should be protected by a trusting requirement are significant. Questions regarding the need for regulation of third-party sellers also continue to emerge. Although the Bureau has begun collecting information regarding the availability of third-party sellers and the potential need for regulation, significantly more information is needed before the Department is able to make a recommendation on the need for regulation of these professionals. To address these questions, the Department has directed the Bureau to perform a market assessment to determine the number of these providers, research the number of consumer complaints filed with the Bureau and other government entities, and report back to the Joint Committee and the Department in two years with recommendations about the need for additional regulation of these retailers.

ISSUE #15: (IMPLEMENT INTERNAL AUDIT RECOMMENDATIONS?) Should the Bureau be required to implement the recommendations of the Department's internal audit?

Recommendation #15: *The Joint Committee and the Department recommend that the Bureau should implement the recommendation of the Department's internal audit.*

Comments: In 2001, the Department directed its internal audit division to conduct a performance audit of the Bureau. The audit concluded that, in most aspects, the Bureau is fulfilling its respective licensing and enforcement statutory responsibilities and operations. However, the audit did identify a number of operational improvements that would benefit the Bureau, if implemented. These include improvements to the licensing process, the Bureau's strategic planning process, oversight of the cemetery and funeral trust funds and handling of consumer complaints. In response to the audit, the Bureau submitted a response in which it concurred with the audit findings and proposed corrective actions to implement the audit recommendations. The Department has directed the Bureau to begin implementing these corrective actions immediately and to submit quarterly progress reports to the Department.

ISSUE #16. (AUTHORIZE RECOVERY OF EXAM ADMINISTRATION COSTS AND LICENSING FEES?) Although the Bureau administers an examination for crematory managers and cemetery managers the Bureau cannot charge a fee for the development and administration of the examination.

Recommendation #16: *The Joint Committee recommends that the Bureau should have the authority to recover costs for administering the cemetery manager and crematory manager examinations and assess a reasonable licensing and application fee.*

Comments: Each of the State's 77 licensed crematories must be operated under the supervision of a crematory manager who has passed the Bureau's crematory manager examination. Additionally, each of the State's approximately 200 cemeteries must be operated by a cemetery manager who has passed the Bureau's cemetery manager examination.

Nonetheless, existing law does not provide the authority to charge a fee for the cemetery manager or crematory manager examinations. In order to administer and develop these examinations, the Bureau has been forced to redirect revenues from other Cemetery Fund resources.

The ongoing cost to develop and administer the crematory manager and cemetery manager examinations is approximately \$430 and \$800 per candidate, respectively. With an average of 76 crematory manager candidates and 41 cemetery manager candidates each year, the Bureau has had to subsidize over \$24,000 in exam costs annually, or \$144,000 since the Department took over the program. These costs per candidate do not include the additional \$110,000 cost of occupational analyses for both professions.

ISSUE #17: (IS \$50,000 FIDELITY BOND ENOUGH?) Applicants for a Certificate of Authority for the operation of a cemetery must post a \$50,000 fidelity bond with the Bureau. It is unclear whether \$50,000 is sufficient to cover losses.

Recommendation #17: *The Joint Committee recommends that the Bureau should conduct a study to assess whether the \$50,000 bond is a sufficient amount to cover losses to the endowment care trust fund. The Bureau should report its findings to the Joint Committee within two months.*

Comments: The purpose of the bond is to guarantee payment of any monetary loss incurred by the endowment care or special care funds of the cemetery authority, occasioned by any acts of fraud or dishonesty by the board of trustees or corporate trustee thereof. An endowment care fund includes money collected from cemetery property purchasers and placed in trust for the maintenance and upkeep of the cemetery. Most endowment care trust funds are significantly more than \$50,000.

The Bureau should report back to the Joint Committee in two months with recommendations about the need to increase the \$50,000 fidelity bond.

ISSUE #18: (RAISE FINE CAP?) Does the Bureau feel that the existing fine structure acts as a sufficient deterrent?

Recommendation #18: *The Bureau should examine the need to increase or modify the fine cap. The Bureau should report its findings to the Joint Committee within two months.*

Comments: The Bureau's fine structure is subject to the limitations of BPC § 125.9 which limits fines to \$2,500 for each inspection or each investigation made with respect to the violation. On several occasions, citation and fines have been issued which, because of the number of violations, total to more than \$2,500. In those cases the actual fine assessed is reduced to \$2,500 because of the limitation of Section 125.9.

The Bureau should report back to the Joint Committee within two months with recommendations about the need to increase or modify the fine cap.